

# EXHIBIT 4

SUPREME COURT : STATE OF NEW YORK  
COUNTY OF ROCKLAND : CIVIL TERM

-----x  
ANNE BRYANT,

Plaintiff,

Index No.  
5192/2000

-against-

BROADCAST MUSIC, INC, (a/k/a "BMI"),  
CLIFFORD A. "FORD" KINDER, KINDER & CO.,  
LTD., VADIVOX, LTD., JULES M. "JOE"  
BACAL, GRIFFIN BACAL, INC., STARWILD  
MUSIC BMI, WILDSTAR MUSIC ASCAP, SUNBOW  
PRODUCTIONS, INC. and JOHN AND JANE DOES  
1 - 10,

Defendants.

-----x  
ANNE BRYANT,

Plaintiff,

Index No.  
2821/2002

-against-

SUNBOW PRODUCTIONS, INC.,

Defendant.

-----x  
NON-JURY TRIAL - CONTINUED

Rockland Supreme Court  
One South Main Street  
Suite 200  
New City, New York 10956  
July 7, 2004

B E F O R E:

HON. ANDREW P. O'ROURKE  
JUSTICE OF THE SUPREME COURT

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1 APPEARANCES:  
 2 FOR THE PLAINTIFF:  
 3 MONAGHAN, MONAGHAN, LAMB & MARCHISIO, ESQS.  
 4 150 West 55th Street  
 5 New York, New York 10019  
 6 BY: PATRICK J. MONAGHAN, JR., ESQ.  
 7 -and-  
 8 JEFFREY C. PRIMIANO, ESQ.

9 FOR THE DEFENDANT, BACAL:  
 10 DUANE MORRIS, LLP.  
 11 380 Lexington Avenue  
 12 New York, New York 10168  
 13 BY: DAVID S. TANNENBAUM, ESQ.  
 14 -and-  
 15 ADRIENNE L. VALENCIA, ESQ.

16 FOR THE DEFENDANT, SUNBOW:  
 17 PATTERSON, BELKNAP, WEBB & TYLER, LLP.  
 18 1133 Avenue of the Americas  
 19 New York, New York 10036-6710  
 20 BY: GLORIA C. PHARES, ESQ.  
 21 -and-  
 22 LAUREN HAMMER BRESLOW, ESQ.

23 FOR THE DEFENDANT, BMI, INC.:  
 24 JUDITH M. SAFFER, ESQ.  
 25 BMI, INC.  
 320 West 57th Street  
 New York, New York 10019-3790  
 Assistant General Counsel

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1 APPEARANCES: (Continued)  
 2  
 3  
 4 ALSO PRESENT: ANNE BRYANT, PLAINTIFF  
 5 JULES M. "JOE" BACAL, DEFENDANT  
 6  
 7  
 8  
 9 ROBERT FRITZ  
 10 SENIOR COURT CLERK  
 11  
 12  
 13 ELIZABETH A. KENT  
 14 SENIOR COURT REPORTER  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 - APPLICATIONS -  
 2 (Convened: 11:00 a.m.)  
 3 (Reconvened in open court, on the record,  
 4 counsel and parties present)  
 5 CAROL ANNE BRYANT,  
 6 the Plaintiff, previously duly sworn  
 7 by the Court, resumed the stand  
 8 and testified further as follows:  
 9 THE COURT: Good morning, all.  
 10 All right, let's go.  
 11 MS. PHARES: Good morning, your Honor.  
 12 Before we get started I would just like to  
 13 renew Sunbow's motion to exclude on your Honor's  
 14 statute of limitations grounds Defendant's  
 15 Exhibits 3 and 4, which are dated in the mid-80s,  
 16 and which are based on original -- original  
 17 registrations, not the re-registrations that are  
 18 alleged in the contract.  
 19 THE COURT: Fine. Denied.  
 20 Let's go ahead.  
 21 MS. PHARES: And, your Honor, if we may put  
 22 on the record just your ruling yesterday in  
 23 Chambers that there would be no further amendment  
 24 of the pleadings? I just wanted to confirm that  
 25 for the record.

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1 - APPLICATIONS -  
 2 THE COURT: I thought I put it on the record  
 3 yesterday that this case is bound by the four  
 4 corners of the pleadings, plus whatever  
 5 determination I made about it in any -- the Court  
 6 made about them in any decision that was rendered.  
 7 MS. PHARES: Thank you, your Honor.  
 8 THE COURT: Okay, let's go.  
 9 MR. MONAGHAN: Good morning, Miss Bryant.  
 10 THE WITNESS: Good morning, Patrick -- Mr.  
 11 Monaghan.  
 12 DIRECT EXAMINATION  
 13 BY MR. MONAGHAN: (Continued)  
 14 Q. You recall your testimony yesterday in  
 15 discussing what your arrangement was with Mr. Bacal re:  
 16 Writer royalties and who got what?  
 17 A. Yes. Said same deal was Michelin & Company  
 18 was what he said it was.  
 19 Q. Just to repeat, what was your discussion  
 20 with Mr. Bacal and your understanding with him as far  
 21 as any royalties for any work that he might have done?  
 22 A. Well, we got hundred -- we got 100 percent  
 23 of the writer's royalties, no matter who wrote the  
 24 lyrics.  
 25 MR. MONAGHAN: Your Honor, pursuant to

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
2 C.P.L.R. 3117 Subsection 2 which entitles us to  
3 read in and use any party's deposition and we're  
4 going to read in testimony from Mr. Bacal's  
5 deposition.

6 MR. TANNENBAUM: I object, your Honor. He  
7 is cross-examining -- he is examining the witness.  
8 If he wants to read something in he can do it  
9 separately. This doesn't take place --

10 THE COURT: Yes, I think that is correct.  
11 You are certainly entitled to read a deposition of  
12 a party to a lawsuit, however, I don't see why  
13 take up your direct testimony here.

14 MR. MONAGHAN: Your Honor, I believe in the  
15 context of the questions that we're talking about  
16 this is particularly relevant. And I looked at  
17 the C.P.L.R. this morning, just to make sure, it  
18 says you can use it for any purpose at any time.

19 THE COURT: I agree with that. I agree with  
20 that. But, I mean, why take up your direct  
21 testimony here?

22 MR. MONAGHAN: It is really to nail down --  
23 the proffer is very simple. To indicate that Mr.  
24 Bacal has testified exactly what the witness said.

25 THE COURT: This is a conversation she had

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
2 with him.

3 MR. MONAGHAN: This is --

4 THE COURT: No, no, she testified about a  
5 conversation she had with him. Get it that way in  
6 this.

7 MR. MONAGHAN: I'll hook it up.

8 MR. TANNENBAUM: Thank you, your Honor.

9 THE COURT: Go on. Go ahead.

10 MR. MONAGHAN: Now, I'm going to show you  
11 Exhibit 5, which I'm going to ask the reporter to  
12 mark. Okay, I thought I premarked this one. This  
13 is one I missed. Copy for counsel.

14 THE COURT: For the record, what is 5?

15 MR. MONAGHAN: 5, your Honor, is BMI U.S.  
16 Feature Royalty Statement indicating commercial  
17 jingles, dated for the period 7/1/86 through  
18 6/30/87, addressed to Anne Bryant at a California  
19 address.

20 THE COURT: We're going to have a question,  
21 I'm sure, about the date on this thing.

22 Why is this important?

23 MR. MONAGHAN: Yeah. Well, your Honor,  
24 that's part of the case. Very simply, the way the  
25 registrations go in originally is the way they are

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
2 supposed to remain throughout the course of the  
3 relationship, unless somebody changes them.

4 MS. SAFFER: Excuse me --

5 MR. MONAGHAN: And that's part of the case.  
6 Your Honor, I have to object to Miss Saffer  
7 jumping up and down in the middle of it.

8 THE COURT: You are going to move this into  
9 evidence?

10 MR. MONAGHAN: I am.

11 THE COURT: Okay, well, they had a chance to  
12 look at it. Now they are going to comment on it.

13 MR. MONAGHAN: Can I finish getting the  
14 witness to identify it?

15 THE COURT: Absolutely.

16 MR. MONAGHAN: Thank you, Judge.

17 (Plaintiff's Exhibit No. 5, a BMI U.S.

18 Feature Royalty Statement dated for the period  
19 7/1/86 through 6/30/87, marked for identification)

20 Q. Miss Bryant, can you identify Exhibit 5?

21 A. It's a jingle royalty statement distributed  
22 on January 18th 1988. It's addressed to me at the  
23 address of Bill Dobishinsky, Tamad, in California. He  
24 received our checks.

25 Q. And you've seen this statement before?

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2 A. Yes.

3 Q. And at some point in time you did get a copy  
4 of this statement?

5 A. Yes, we did.

6 MR. MONAGHAN: We offer this in evidence as  
7 Exhibit 5.

8 THE COURT: All right, I'll hear from  
9 counsel.

10 MS. PHARES: Go ahead.

11 MS. SAFFER: Your Honor, I object on the  
12 grounds that this statement has been characterized  
13 by the plaintiff's witness in a way that is not  
14 accurate. I don't object to the document itself.  
15 I object to his characterization of what it's for,  
16 what it's about, et cetera.

17 THE COURT: All right.

18 MR. TANNENBAUM: We object to it on two  
19 grounds, your Honor: One, again, as you pointed  
20 out, the date is 1988. Statute of limitations,  
21 two, stopped that. And also on relevance grounds  
22 in that this deals with commercial jingles. It  
23 does not deal with either music that is used for  
24 the television series or songs that are  
25 independently registered. It's irrelevant to the

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issues that are in the case.

THE COURT: All right.

MR. TANNENBAUM: There is no claim in the complaint about anything that was wrong in 1988.

MS. PHARES: And I join in that objection, your Honor, for Sunbow.

THE COURT: All right, for whatever weight I want to put on it I'll allow it into evidence.

However, I would say why are we using documents so far back? Are there any newer ones?

MR. MONAGHAN: Yes.

THE COURT: Let's go.

MR. MONAGHAN: I'm doing my best.

THE COURT: All right.

MR. MONAGHAN: But it's like, you know, once upon a time and then in the middle and then the end. I'm trying to do it chronologically.

THE COURT: Okay.

(Plaintiff's Exhibit No. 5, marked and received in evidence)

Q. You have in --

MR. MONAGHAN: Your Honor, I have a copy for your Honor too, if I may?

THE COURT: Okay. Sure.

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Q. Miss Bryant --

A. Yes.

Q. -- you have before you Exhibit 5, do you?

A. Yes.

Q. Okay. Now, to begin, what is your understanding of what this document is? Your understanding.

A. It's a royalty statement.

Q. And does it bear BMI -- it's a little cropped there at the top.

A. BMI royalty statement. I've gotten this many times.

Q. You see the words, "commercial jingles"?

A. Yes.

Q. Did you put those words there?

A. No. That's the way they come. I have the original.

Q. Okay. All right. And is that your name over on the left-hand side?

A. Yes, it is.

Q. Okay, and whose address is that?

A. The address of Bill Dobishinsky, who is Sunbow's administrator. Tamad was his company.

Q. And how is it that your statement is being

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sent to this California address, to Mr. Dobishinsky?

A. Well, he was the administrator for Sunbow and he received our checks and he knew how the administration worked. Once he received them, he separated the amounts and gave Ford and I each an equal check.

MR. MONAGHAN: Your Honor, at this point I had intended to read in just a line or two from Miss Weitzman's deposition on this very point of who Mr. Dobishinsky was.

THE COURT: Well, she's testified to who Mr. Dobishinsky was.

MR. MONAGHAN: Unless the Defendants are willing to consent that Mr. Dobishinsky was Sunbow's administrator.

MR. TANNENBAUM: No, I'm not willing to consent, unless you consent that he was also her lawyer.

MR. MONAGHAN: No, I won't. That is exactly what this testimony is intended to address.

THE COURT: Please. That is cross-examination. I want this case to get going. Come on.

BY MR. MONAGHAN:

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Q. Now, if I could direct your attention to the reference to Robot In Disguise.

A. Yes.

Q. Do you see that reference?

A. Yes.

Q. What composition is that? What does it have to do with this lawsuit?

A. That's the Transformers. It's a jingle name that Bill registered Transformers on.

Q. And what percentage is shown as your percentage of Robot In Disguise, also known as the Transformers?

A. 100 percent.

Q. What other information is shown on here?

Although it may be obvious to some people that have more experience than I or perhaps the Court, what other information is supposed to be shown on this statement or is shown on the statement?

A. The number of performances.

Q. These are public performances?

A. Yes. 107,625. 100 percent is my share. My percentage, it says. Performances credited to me 176,125. And it's local T.V. performances. And then there is a dollar amount.



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2 Q. And do you know --

3 A. \$40,000.

4 Q. Do you know how that dollar amount is

5 arrived at when you are credited with these

6 performances?

7 A. They have a formula, BMI, that takes the

8 number of performances and where they are generated

9 from if it is a local network, whatever. And it has a

10 formula that multiplies out to be the dollar amount. I

11 don't really know how they do it, but that is the basis

12 of it.

13 Q. Just so we are on the subject, what

14 royalties besides public performance royalties as

15 reflected in this and perhaps others similar to this

16 did you receive other than publi -- what royalties

17 other than public performance royalties have you ever

18 received with respect to the Transformers?

19 A. I've got some mechanical royalties for

20 European VHS videos in the late eighties around this

21 time and through 1992 or '93.

22 Q. These were through BMI?

23 A. No, they came through Sunbow. Sunbow sent

24 them and --

25 Q. Do you know whether they were performance

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN

2 royalties?

3 A. No, they were mechanical royalties. It is

4 mechanical royalties.

5 Q. How about -- are you familiar with -- well,

6 let's ask you: What is a mechanical royalty, as you

7 understand it?

8 A. As I understand it, mechanical royalty is

9 for music that's on a fixed item that was like a final

10 or a tape or a disc that's been brought by a mechanical

11 means. I think it started out in the old piano roll

12 days. You had to use a mechanical device to create

13 this as opposed to something being broadcast over the

14 air or live.

15 Q. Are you familiar with the term

16 "synchronization fees" or "sync fees"?

17 A. I know it has to do with music

18 synchronization with film.

19 Q. Music that is somehow also synchronized with

20 a visual image?

21 A. Yes.

22 MS. PHARES: Objection. Leading.

23 THE COURT: Sustained.

24 Q. Well, what did you mean when you said, "with

25 film"? What was your understanding?

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN

2 A. The music went with -- with like a song,

3 like a music video. It's --

4 Q. Okay. Now --

5 MS. PHARES: Your Honor, I'm going to ask to

6 have that stricken. I mean, after Mr. Monaghan

7 has testified for his client we can't now have her

8 repeat it back to him.

9 THE COURT: That's been standard in every

10 courtroom I've been in. When anyone objects to

11 leading they just said -- they just rephrase the

12 question. I'm not going to strike that.

13 But, please don't lead.

14 Go ahead.

15 MR. MONAGHAN: I won't.

16 THE COURT: All right, let's go.

17 Q. All right. Now, if I can continue to

18 address Exhibit 5, Miss Bryant, there are references to

19 some other compositions that are at issue in this case.

20 We've heard the names. Can you please identify which

21 on Exhibit 5 are at issue in the case?

22 A. Yes, there's several. I see in Humanoids,

23 My Little Pony, Robotics, and Truly Outrageous. We

24 used to call it the nick-name for JEM. That was the

25 jingle name that Bill used to register it for jingles.

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN

2 Q. In each case you are credited with

3 100 percent?

4 A. Yes. Oh, there's also Real American Hero.

5 Q. What is Real American Hero?

6 A. That is GI Joe.

7 Q. And do you know how it is that you are

8 credited with a one third share of Real American Hero?

9 A. I don't understand that, because on other --

10 on the other jingle statements it is 100 percent.

11 Q. Okay, now --

12 MR. TANNENBAUM: Objection --

13 MS. PHARES: Objection.

14 MR. TANNENBAUM: -- to the reference of

15 other jingle statements. They are apparently not

16 in evidence.

17 THE COURT: I'll allow it.

18 MR. MONAGHAN: Now, I'll ask the reporter to

19 mark Exhibit 6.

20 THE WITNESS: Do you want this back?

21 MR. MONAGHAN: Just hold it. Put it right

22 here in the evidence pile. Thanks. Okay.

23 (Plaintiff's Exhibit No. 6, a clearance

24 report dated 4/24/97, marked for identification)

25 Q. Now, are you able to identify Exhibit 6,

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 Miss Bryant? Take your time.  
 3 A. Yes. This is the Transformers Vocal Theme  
 4 2.  
 5 Q. Well, no, what is the document itself, if  
 6 you know?  
 7 A. Okay, Broadcast Music received a clearance  
 8 report. I believe this is an electronic clearance. I  
 9 think that's what they call it.  
 10 Q. Do you know how you happened to obtain a  
 11 copy of this, if you did?  
 12 A. You subpoenaed BMI and they sent it to you.  
 13 MR. MONAGHAN: We're offering Exhibit 6.  
 14 MR. TANNENBAUM: No objection.  
 15 MS. PHARES: No objection.  
 16 THE COURT: I'm waiting to hear from BMI.  
 17 MS. SAFFER: I signalled no objection. I'm  
 18 sorry, your Honor.  
 19 THE COURT: So 6 is in evidence.  
 20 MR. MONAGHAN: Yes, your Honor. If I may  
 21 hand a copy up to the Court.  
 22 THE COURT: Okay, describe it for the  
 23 record.  
 24 MR. MONAGHAN: BMI -- I'm sorry, Broadcast  
 25 Music, Inc. clearance report dated 4/24/97. Looks

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 like there is a time entry of twenty hundred  
 3 hours, 54 minutes, 57 seconds. Page 21. They  
 4 reference the submitter as SONY/A.T.V. songs.  
 5 Looks like trace special account.  
 6 THE COURT: That's enough. I'll take a copy  
 7 of it.  
 8 (Plaintiff's Exhibit No. 6, marked and  
 9 received in evidence)  
 10 Q. Firstly, if I can ask you this, Miss Bryant,  
 11 do you know who SONY/A.T.V. songs is with respect to?  
 12 A. Me.  
 13 Q. You?  
 14 A. They are my publisher, I believe.  
 15 Q. How were they selected as a publisher with  
 16 respect to this song, Transformers Vocal Theme; and who  
 17 selected them?  
 18 A. Well, my understanding is that --  
 19 MR. TANNENBAUM: Objection, your Honor.  
 20 A. -- Wildstar was sold to SONY --  
 21 THE COURT: What is your objection?  
 22 MR. TANNENBAUM: She doesn't have any  
 23 personal knowledge. She said, "my understanding".  
 24 What is that based on?  
 25 MR. MONAGHAN: It is always her

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 understanding.  
 3 THE COURT: Well, this is in evidence now.  
 4 MR. TANNENBAUM: Well, the document is --  
 5 MS. PHARES: The document is --  
 6 MR. TANNENBAUM: He asked a question about  
 7 an entry on the document. I'll withdraw my  
 8 objection.  
 9 THE COURT: Let's go forward.  
 10 Q. Who is SONY A.T.V. songs in the picture  
 11 here?  
 12 A. They are registering as a submitter and they  
 13 are -- A.T.V. songs is a big publisher, music  
 14 publisher.  
 15 Q. What song is being registered?  
 16 A. Transformers Vocal Theme which now says 2  
 17 a/k/a Transformers Opening Theme.  
 18 Q. Okay. Now, what is their -- what are the  
 19 percentages shown -- let me back up.  
 20 Do you have an understanding of the purpose  
 21 of this form?  
 22 A. It's a registration form.  
 23 Q. Okay. And do you have an understanding of  
 24 how it was that this registration form, dated  
 25 April 24th 1997, was according to the document a

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 received clearance report?  
 3 A. Well, I didn't register it. They registered  
 4 it and I don't know why they registered it, but they  
 5 did.  
 6 Q. Okay.  
 7 A. The publisher registered it.  
 8 Q. Was this done with your authorization?  
 9 A. No, I didn't even know about it.  
 10 Q. Okay. Now, what are the percentages shown  
 11 with respect to this song Transformers Opening Theme?  
 12 A. The writers are Joe Bacal. The share is  
 13 8.30. Anne Bryant, my share, is 8.30. And Ford  
 14 Kinder, his share, is 83.40. That totals a hundred.  
 15 Q. Do you know how those percentages were  
 16 arrived at when this form was submitted?  
 17 A. I can't imagine.  
 18 Q. Okay. And --  
 19 A. This is different on page two. Did you see  
 20 page two?  
 21 Q. Yeah.  
 22 MS. PHARES: Objection, your Honor.  
 23 THE COURT: Sustained.  
 24 Q. You have to respond to a question.  
 25 A. I'm sorry.

<p style="text-align: right;">Page 199</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 Q. Let me go back to Exhibit 5 for a second.</p> <p>3 Do you remember the discussions yesterday</p> <p>4 about whether jingles were at issue in this case or</p> <p>5 not?</p> <p>6 Do you remember those discussions?</p> <p>7 A. I remember the people objected to that.</p> <p>8 Q. Do you know who put the words "commercial</p> <p>9 jingles" on this form?</p> <p>10 A. It comes that way from BMI.</p> <p>11 Q. Do you have any idea why the Defendants</p> <p>12 contend that we are not talking about jingles?</p> <p>13 A. I don't understand that, no.</p> <p>14 MR. TANNENBAUM: Objection, your Honor.</p> <p>15 MS. PHARES: Objection, your Honor.</p> <p>16 THE COURT: Sustained. Sustained. Struck</p> <p>17 from the record.</p> <p>18 Q. Okay, I'd like you to tell the Court,</p> <p>19 please, about how the Transformers, the sessions get</p> <p>20 into actually the mechanics of composing the music,</p> <p>21 where it was done.</p> <p>22 You don't have to answer the question yet,</p> <p>23 just give me the idea what the subject matter is.</p> <p>24 A. For this song or any song?</p> <p>25 Q. Just talking about Transformers now.</p>	<p style="text-align: right;">Page 201</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 presented that live to him. Said, maybe not. Then</p> <p>3 they selected the one that I wrote --</p> <p>4 Q. Let me stop you there for a second. I don't</p> <p>5 want to break your train of thought.</p> <p>6 Where was the work done?</p> <p>7 A. It was done at my office, 41 West 73rd</p> <p>8 Street.</p> <p>9 Q. And in the actual composition phase, which</p> <p>10 you just talked about, was anyone there from Mr.</p> <p>11 Bacal's agency overseeing or directing how that work</p> <p>12 would be done?</p> <p>13 A. Oh, no, I never let anybody do that.</p> <p>14 Q. Who made the decisions as to the actual</p> <p>15 composition of the music?</p> <p>16 A. Joe chose it.</p> <p>17 Q. And when you say, Joe chose it, I'm talking</p> <p>18 about who made the decisions as to the creative aspects</p> <p>19 of the music?</p> <p>20 A. Oh, I did.</p> <p>21 Q. Okay.</p> <p>22 A. We wrote it, wrote our versions and</p> <p>23 presented them to him.</p> <p>24 Q. And how many musicians were involved?</p> <p>25 A. At that point it was just myself and Ford</p>
<p style="text-align: right;">Page 200</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 A. A little history?</p> <p>3 Q. We want you to tell the Court what was</p> <p>4 involved in doing that music, where it was done, who</p> <p>5 did it, who decided how it would be done. Those are</p> <p>6 going to be the general subject matters.</p> <p>7 A. Okay, it was 1983, late August, and I got a</p> <p>8 script from a bike messenger with this Transformers job</p> <p>9 that was forwarded -- spoke to Joe the day before, Joe</p> <p>10 Bacal the day before. And I open it up from the bike</p> <p>11 messenger. Look at it. I heard it. I went to the</p> <p>12 piano and I played it. And then I noticed that I</p> <p>13 wasn't supposed to sing the middle part. So I liked it</p> <p>14 that way. So I kept it. So the song would have a</p> <p>15 bridge. It was supposed to be spoken by an announcer,</p> <p>16 but I said I'm going to present it this way.</p> <p>17 A few days later Joe Bacal came over to our</p> <p>18 office and forwarded a written version. And we also</p> <p>19 had a friend of ours, Shepherd Stern, write a version.</p> <p>20 And it was my version which was very different from</p> <p>21 anybody else's. It was in a minor key. It was a</p> <p>22 strange thing to do for a children's jingle, but it</p> <p>23 worked, you know, and Joe liked it. And we presented</p> <p>24 all three to him. And then we -- I think we did demos</p> <p>25 on it. We usually did piano demos on it. But we</p>	<p style="text-align: right;">Page 202</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 and Shep. Each played our songs. And then when he</p> <p>3 called to say that we were going to do the song -- he</p> <p>4 only recorded one version, my version.</p> <p>5 Q. Where was that recorded?</p> <p>6 A. National Edison Studios on 46th Street.</p> <p>7 Q. Who made the arrangements for that?</p> <p>8 A. Well, we booked the singers and the</p> <p>9 musicians.</p> <p>10 Q. What was involved with Mr. Bacal or anyone</p> <p>11 from his agency in that respect?</p> <p>12 A. They don't do that. I do that. And I also</p> <p>13 decide on the -- the orchestra. How many people there</p> <p>14 are in it. Of course, I have to weigh that against a</p> <p>15 budget that they have to work with. But the idea was</p> <p>16 to achieve what they wanted to achieve with the song,</p> <p>17 musically.</p> <p>18 Q. When you say, a budget, you were given a</p> <p>19 specific budget here?</p> <p>20 A. I don't think I was given a specific budget,</p> <p>21 but it was like, well, we can't afford real strings,</p> <p>22 can't we do synthesizer? And those kind of</p> <p>23 considerations. But bring off the idea the same way</p> <p>24 and watch the costs.</p> <p>25 Q. All right, and ultimately you came to the</p>



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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 point of a final version?  
 3 A. The recording session, yes.  
 4 Q. The recording session?  
 5 A. Yes.  
 6 Q. That was at the National --  
 7 A. No, I -- first I did an arrangement. It's  
 8 an orchestration. And I called, booked musicians and  
 9 singers, then I recorded the music tracks. I -- the  
 10 singers came in, we recorded them, we did that on their  
 11 own. Seldom came to a session.  
 12 Q. Who hires the musicians?  
 13 A. Well, technically, we're hiring the  
 14 musicians at that point. We are the signatory to the  
 15 musicians union and the producers and the leaders.  
 16 Q. When you say, leader, what is the meaning of  
 17 that term?  
 18 A. That is a real term, leader. Doesn't  
 19 necessarily mean conductor. Leader is a person who is  
 20 responsible to file the session and make sure things  
 21 are done properly and paid properly and that everybody  
 22 is credited properly. That was usually me. Sometimes  
 23 it was Ford. We took turns.  
 24 Q. File with who for what?  
 25 A. The A.F.M., American Federation of Musicians

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 Local 802.  
 3 Q. And what participation did you or Mr. Kinder  
 4 have in either singing or playing instruments?  
 5 A. I was the arranger/conductor, and I sang.  
 6 And Ford -- I don't know what he played, but he  
 7 definitely produced. I can't remember what he played.  
 8 Ford is a good percussionist. He often did that. And  
 9 he was a contractor.  
 10 Q. Okay. Over what period of time was the  
 11 Transformers Theme that you are talking about composed?  
 12 How long did it take?  
 13 A. How long did it take me to write it?  
 14 Q. Yeah.  
 15 A. The song?  
 16 Q. Yeah.  
 17 A. About 30 seconds. It was fast.  
 18 Q. Over what period of time -- what period of  
 19 time was involved in actually bringing it to fruition  
 20 to the point where it was submitted?  
 21 A. Well, it was written in late August. Maybe  
 22 the very next day Joe came over and reviewed the song,  
 23 listened to them, and chose what he liked. And then I  
 24 recorded on September 1st -- I thought we recorded on  
 25 September 1st, but I see the wrong date in my mind. It

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 was September 9th.  
 3 Q. Of what year?  
 4 A. '83. So it was about a week or ten days  
 5 later we recorded it and it went out fast because of  
 6 their concerns about timing on it.  
 7 Q. How were their musicians paid?  
 8 A. Well, they were paid according to union  
 9 scales and jingle code.  
 10 MS. PHARES: Objection. Relevance.  
 11 THE COURT: I'll allow that.  
 12 Go ahead.  
 13 Q. And who paid them?  
 14 A. We usually paid them, and we were reimbursed  
 15 for the session. And then it was upgraded by the  
 16 agency with their payrolling people.  
 17 Q. Who controlled the recording sessions?  
 18 A. I did.  
 19 Q. In what format was this music?  
 20 A. This tape, 24 track master tape that was  
 21 then mixed down to two track and four track master  
 22 mixes.  
 23 Q. And how were you -- when I say you,  
 24 Kinder -- is it Kinder and Bryant we are talking about?  
 25 A. Yes.

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 Q. How was Kinder & Bryant paid? When I say  
 3 how, was there a check in gross, was there a check with  
 4 deductions for --  
 5 A. No, no, we got a 3500 creative fee, and a  
 6 1500-dollar arranging fee, then we got reimbursements  
 7 for payrolling.  
 8 Q. And how about any tax forms? Did you -- do  
 9 you recall whether you got a W-2 or a 1099, or do you  
 10 remember at all?  
 11 A. Are you talking about the production company  
 12 Kinder & Bryant?  
 13 Q. I'm talking about when you got money from --  
 14 A. You, meaning Kinder & Bryant?  
 15 Q. Kinder & Bryant, yes. You. Kinder &  
 16 Bryant.  
 17 A. It was a corporation. We got a gross check  
 18 and -- I don't know if we got any forms. There were no  
 19 deductions. It was a corporation.  
 20 Q. Okay.  
 21 A. But Kinder & Bryant, the people got paid by  
 22 our own -- into our own corporation for our services,  
 23 gross.  
 24 Q. Right. Okay. And how about the other  
 25 compositions that you've talked about, the other -- the

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 songs, the music at issue in the case, how did it work  
 3 in terms of payment, arranging, controlling how the  
 4 music was prepared? All the questions I just asked  
 5 you.  
 6 A. It worked that way almost the same exact  
 7 same way except that I remember we did piano demos.  
 8 Let's say Ford and I each always wrote a version of  
 9 each job for, let's say, Humanoids. He wrote a  
 10 version, I wrote a version. In that one they chose his  
 11 version. And what would happen is that I would give  
 12 Ford a lead sheet, that is musical notation of mine,  
 13 and I would sing a rough through a little tape recorder  
 14 on the piano and send it over to him and he would  
 15 record a version of mine, a nice piano demo, great  
 16 singer with his voice, and one on his -- one on his  
 17 song too. Then we would send the tapes over to Joe and  
 18 he would pick the one he liked better.  
 19 Q. Now, about those same sort of questions that  
 20 I asked you earlier about, who hired the musicians?  
 21 A. We did.  
 22 Q. Who paid the musicians?  
 23 A. If it was a final I have to make  
 24 distinction. If there was a final they pay --  
 25 payroll agency just took the whole thing. I think

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 that was the way it worked. But if there was a demo  
 3 that they were going to review and decide, if they were  
 4 going to go final we usually played a demo session and  
 5 got reimbursed. That is my memory.  
 6 Q. Who decided on the number of musicians that  
 7 would be involved?  
 8 A. I always did. I did all the arrangements.  
 9 Q. Who was the leader on the other  
 10 compositions, if you remember?  
 11 A. It was either Ford or myself. One of us.  
 12 We both as many of the sessions together as we could  
 13 be.  
 14 Q. Now, are you familiar, are you, with the  
 15 advertising business and commercial jingles in general?  
 16 A. I've been doing it for 30 -- more than 30  
 17 years.  
 18 Q. And for how long is a typical commercial and  
 19 jingle? What is the life of a commercial jingle?  
 20 A. Commercial that goes on the air, it goes on  
 21 the air for 13 weeks. We hope it goes on longer.  
 22 Q. But when you do the jingle what is your  
 23 expectation of how long this jingle -- this jingle you  
 24 may have written the music for?  
 25 A. That's gone final?

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 Q. That's gone final.  
 3 A. Yeah, 13 weeks, that's all I can expect.  
 4 Q. Okay. Do you have any idea where that  
 5 13-week period comes from?  
 6 A. Well, it is four times 13 is 52. So it's a  
 7 quarter of the year. And that's the way musicians are  
 8 paid, and --  
 9 Q. When you did these -- and when you did  
 10 the -- when you composed the music at issue here was  
 11 your expectation any different than what you just said  
 12 about the life of the jingles? Thirteen weeks?  
 13 A. I think I had a different expectation of the  
 14 JEM Show only because it was -- wait a minute. It was  
 15 written as a theme first, you know, so that that T.V.  
 16 show took off and we didn't know, and it might be on  
 17 all year. You know, we were hoping that it would catch  
 18 fire and it did. So that was the different one. We  
 19 weren't sure, we didn't know what was going to happen  
 20 with the Transformers toy but, of course, it was a  
 21 block buster. Then they went into television.  
 22 Q. When you -- when you composed the music that  
 23 you talked about for Mr. Bacal, what was your  
 24 expectation and understanding about the royalties that  
 25 would be generated by those compositions?

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 A. We got 100 percent of the writer's  
 3 royalties.  
 4 MR. TANNENBAUM: Just object to the form of  
 5 the question, writing for Mr. Bacal.  
 6 THE COURT: I didn't hear the objection.  
 7 MR. TANNENBAUM: Oh, I said when you wrote  
 8 it for Mr. Bacal. I don't see any testimony that  
 9 she was working for Mr. Bacal as an individual.  
 10 She was working for a company.  
 11 THE COURT: I'll allow it.  
 12 Go ahead.  
 13 Q. Now, yesterday a couple of times we played  
 14 Transformers on your telephone.  
 15 A. Yes.  
 16 Q. Do you remember that?  
 17 A. Yes.  
 18 Q. Okay. And if I'm not mistaken you said you  
 19 did receive some performance royalties, right?  
 20 A. Yes, I did.  
 21 Q. Correct?  
 22 Are you able to tell the Court what  
 23 percentage?  
 24 A. 8.3 percent.  
 25 Q. That same 8.3 we've just seen --

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN

2 A. Yes.

3 Q. -- in these exhibits?

4 A. Yes.

5 Q. Okay.

6 MR. MONAGHAN: Actually, your Honor, I

7 believe we are to the point where we are actually

8 going to do a little technical stuff and we got

9 there faster than I thought.

10 THE COURT: We'll take a short break.

11 MR. TANNENBAUM: Judge, we'll stipulate she

12 wrote the music.

13 THE COURT: Is that all?

14 MR. MONAGHAN: We'll take the stipulation

15 but, I don't know, I've got to look at how it

16 comes through.

17 Which music?

18 MR. TANNENBAUM: Tell me which music you

19 want us to stipulate to that he wrote the music

20 to. I'll turn to my client.

21 MR. MONAGHAN: It isn't just a question of

22 the music she wrote. It's a question of the music

23 to which she has rights, firstly.

24 THE COURT: Well, let's start out with the

25 music that she wrote then we can worry about the

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN

2 ones she had rights to. We've got a whole bunch

3 here. Let's go quickly through those.

4 In Humanoids everybody agree she wrote it.

5 MR. BACAL: I'm not sure who wrote

6 Humanoids.

7 THE COURT: Let's take a break.

8 THE WITNESS: I said Ford wrote it.

9 MR. BACAL: I can't stipulate to that.

10 THE COURT: Well, we're not getting any

11 stipulation.

12 MR. TANNENBAUM: No, I think --

13 THE COURT: We're going to allow the court

14 reporter to take a break. Every hour the court

15 reporter takes a break.

16 (Recess: 11:30 a.m.)

17 (Reconvened: 11:40 a.m.)

18 CAROL ANNE BRYANT,

19 the Plaintiff, previously duly sworn

20 by the Court, resumed the stand

21 and testified further as follows:

22 THE COURT: Let's continue.

23 MR. MONAGHAN: I'm going to ask the reporter

24 to mark the next exhibit as 7.

25 (Plaintiff's Exhibit No. 7, DVD, marked for

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN

2 identification)

3 Q. Can you identify, Miss Bryant, Exhibit 7,

4 please?

5 A. This is a DVD. The Original Transformers

6 Heroes The Rebirth. Special three-episode collector's

7 edition. Rhino Nation DVD/video. Shall I read the

8 back?

9 Q. Well, let's just start with how is this in

10 the courtroom? Where does it come from?

11 A. This is one of the many releases of the

12 Transformers Original T.V. Series.

13 Q. Who purchased this?

14 A. Oh, I did.

15 Q. That's what I'm trying to --

16 A. Oh, I'm sorry.

17 Q. Okay, you purchased it.

18 When did you purchase it?

19 A. I don't remember. In the last couple of

20 years from Amazon.com.

21 MR. MONAGHAN: We offer this into evidence

22 the CD and the case.

23 MS. PHARES: This is being offered for what?

24 MR. MONAGHAN: This is being offered because

25 it says Transformers and has Transformers music on

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN

2 it which the Plaintiff will talk about.

3 MS. PHARES: Well -- we don't have an

4 objection.

5 MR. TANNENBAUM: No objection, your Honor.

6 MS. SAFFER: No objection.

7 THE COURT: All right, no objection. I

8 thought there was some colloquy.

9 MR. MONAGHAN: That is their --

10 MR. TANNENBAUM: BMI royalty has nothing to

11 do with tapes. My argument, this has nothing to

12 do with Mr. Bacal, but that's my position.

13 MS. PHARES: We certainly have -- I mean,

14 that's why I'm asking what it is being offered

15 for. I don't understand what the offer is for.

16 THE COURT: Well, but --

17 MS. PHARES: It doesn't say -- I mean, as

18 far as I understand this it has nothing to do with

19 performance royalties or re-registration which is

20 all that is included in either the complaint or

21 your Honor's rulings.

22 MR. MONAGHAN: Not entirely accurate on that

23 last point, but --

24 THE COURT: Go ahead.

25 MR. MONAGHAN: Thank you, Judge.



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<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 MR. TANNENBAUM: I will say the amended</p> <p>3 complaint there was some mention of DVDs not</p> <p>4 connected to anything, but the word is in there.</p> <p>5 THE COURT: All right, so we have it in</p> <p>6 evidence.</p> <p>7 (Plaintiff's Exhibit No. 7, marked and</p> <p>8 received in evidence)</p> <p>9 THE COURT: Go ahead.</p> <p>10 MS. PHARES: Your Honor --</p> <p>11 MR. MONAGHAN: You know, you can all --</p> <p>12 MS. PHARES: If you are playing this for the</p> <p>13 purpose of stipulating that her music is on as</p> <p>14 part of the T.V. Shows, we can stipulate to that.</p> <p>15 THE COURT: Well, this is -- I take it we</p> <p>16 can all agree the music that Miss Bryant wrote.</p> <p>17 MS. PHARES: That it is -- and that it is</p> <p>18 part of the audiovisual work that she originally</p> <p>19 wrote it for.</p> <p>20 MR. TANNENBAUM: It's the television program</p> <p>21 from the 1980s that is now being released on</p> <p>22 videocassette and DVD.</p> <p>23 MR. MONAGHAN: You are not testifying.</p> <p>24 THE COURT: Hold on. Hold on. Well, it is</p> <p>25 in evidence already. You were just commenting on</p>	<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 MR. MONAGHAN: I didn't --</p> <p>3 THE COURT: All right, that part is struck</p> <p>4 from the record.</p> <p>5 Go ahead.</p> <p>6 Q. What monies do you, Miss Bryant, receive</p> <p>7 from this property? The sale and distribution.</p> <p>8 A. Of this property --</p> <p>9 Q. That property.</p> <p>10 A. -- the DVD? None.</p> <p>11 Q. Okay, we have --</p> <p>12 MR. MONAGHAN: Perhaps the Defendants --</p> <p>13 I'll identify them, but I guess we should do that.</p> <p>14 We can take these and --</p> <p>15 THE COURT: We're marking these?</p> <p>16 MR. MONAGHAN: Yes, your Honor.</p> <p>17 Just so the record is clear, your Honor, the</p> <p>18 exhibit includes not only the jacket but obviously</p> <p>19 the CD that is inside.</p> <p>20 THE COURT: Yes.</p> <p>21 MS. PHARES: DVD.</p> <p>22 MR. MONAGHAN: DVD, thank you.</p> <p>23 (Plaintiff's Exhibit No. 8, a DVD,</p> <p>24 Transformers Villain The Ultimate Doom, marked for</p> <p>25 identification)</p>
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<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 it. Let's have some questions. Please sit down.</p> <p>3 MR. MONAGHAN: I just have to raise the</p> <p>4 volume a little so you can hear it.</p> <p>5 THE COURT: I can hear it.</p> <p>6 THE WITNESS: That's the jingle.</p> <p>7 (Plaintiff's Exhibit No. 7 in evidence being</p> <p>8 played)</p> <p>9 MS. PHARES: Your Honor, I don't know what</p> <p>10 the question is.</p> <p>11 THE COURT: Okay, we've got that down.</p> <p>12 MR. MONAGHAN: Okay.</p> <p>13 THE COURT: Miss Bryant's music is on this</p> <p>14 video. Let's go ahead. Turn it off.</p> <p>15 BY MR. MONAGHAN:</p> <p>16 Q. Your music is on that video?</p> <p>17 A. Not only my music but my arrangement. And</p> <p>18 that's a jingle.</p> <p>19 Q. Okay, what monies do you receive --</p> <p>20 A. That's the jingle session.</p> <p>21 MR. TANNENBAUM: Objection.</p> <p>22 MS. PHARES: Objection.</p> <p>23 MR. MONAGHAN: Can I finish my question?</p> <p>24 MR. TANNENBAUM: She wasn't answering the</p> <p>25 question.</p>	<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 (Plaintiff's Exhibit No. 9, movie, marked</p> <p>3 for identification)</p> <p>4 (Plaintiff's Exhibit No. 10, Season 2, Part</p> <p>5 1, marked for identification)</p> <p>6 Q. Miss Bryant, I'm now going to show you</p> <p>7 Exhibit 8.</p> <p>8 Can you identify this?</p> <p>9 A. That's Transformers Villain The Ultimate</p> <p>10 Doom. It's a DVD from Rhino Nation. Special</p> <p>11 three-episode collector's edition. That's a real</p> <p>12 problem.</p> <p>13 MS. PHARES: Your Honor, does the -- does</p> <p>14 Plaintiff's counsel have photocopies at least of</p> <p>15 the face material of these DVDs? Because we have</p> <p>16 no physical record of these unless, of course, you</p> <p>17 are providing the DVDs to us as well. But, you</p> <p>18 know, I have nothing -- we have nothing to refer</p> <p>19 to for our evidence of these exhibits.</p> <p>20 MR. MONAGHAN: We would be happy to do that.</p> <p>21 We don't have them with us today. We'll make</p> <p>22 cover copies of the face and reverse.</p> <p>23 MS. PHARES: And reverse?</p> <p>24 MR. MONAGHAN: I believe that's what I said.</p> <p>25 MR. TANNENBAUM: Is there language on the</p>



<p style="text-align: right;">Page 219</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 inside jacket as well?</p> <p>3 MR. MONAGHAN: That will be a little more</p> <p>4 difficult.</p> <p>5 THE COURT: Well, I think what I really want</p> <p>6 to know is no doubt in my mind that Miss Bryant</p> <p>7 with her talent is responsible for that music and</p> <p>8 made the arrangement and whatever.</p> <p>9 Who of the Defendants here do you claim is</p> <p>10 the offending party preventing Miss Bryant from</p> <p>11 getting her money?</p> <p>12 MR. MONAGHAN: Right there. Sunbow. These</p> <p>13 are Sunbow Productions. Sunbow licensed this.</p> <p>14 Sunbow --</p> <p>15 THE COURT: Okay. Okay.</p> <p>16 MS. PHARES: Objection to the representation</p> <p>17 that's been made by counsel. It may be a Sunbow</p> <p>18 Production, I will concede that.</p> <p>19 THE COURT: I didn't say you were</p> <p>20 responsible for anything.</p> <p>21 MR. MONAGHAN: I didn't mean you personally.</p> <p>22 THE COURT: That's their position.</p> <p>23 Let's go ahead and mark the exhibits,</p> <p>24 please.</p> <p>25 MR. MONAGHAN: Thank you, Judge. And we</p>	<p style="text-align: right;">Page 221</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 have now been shown to counsel for the Defendants.</p> <p>3 I'm ready to listen to objections.</p> <p>4 MR. TANNENBAUM: I have no objections, your</p> <p>5 Honor. I just want the record to reflect that</p> <p>6 Miss Bryant just went to meet privately with her</p> <p>7 counsel. No objection.</p> <p>8 THE COURT: Nothing wrong with that, that I</p> <p>9 know of. That comes up often.</p> <p>10 MR. TANNENBAUM: I didn't say there was</p> <p>11 anything wrong.</p> <p>12 THE COURT: I don't know any rule in any</p> <p>13 case that says a client can't meet with the</p> <p>14 lawyer.</p> <p>15 MR. TANNENBAUM: I wasn't objecting, I was</p> <p>16 just noting it.</p> <p>17 MS. PHARES: Your Honor, I'm just going to</p> <p>18 object once again to the fact that this complaint</p> <p>19 has never alleged any recovery under any</p> <p>20 contractual theory for any monies related to DVDs.</p> <p>21 And I would like to reserve that as a continuing</p> <p>22 objection to testimony relating to all these</p> <p>23 audiovisual works that are on DVDs.</p> <p>24 THE COURT: Well, I think we're going to get</p> <p>25 there. I'm aware of your objection about the</p>
<p style="text-align: right;">Page 220</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 did.</p> <p>3 THE COURT: They are all marked now?</p> <p>4 Q. Now, before we finish with Exhibit 7 --</p> <p>5 THE COURT: Let me see 7 in evidence.</p> <p>6 A. Patrick, this is a serious problem for me.</p> <p>7 I'm a leader on that. That's a jingle.</p> <p>8 MS. PHARES: Objection, your Honor. No</p> <p>9 question pending.</p> <p>10 MR. MONAGHAN: That is not a serious</p> <p>11 problem. I'll take it up with you at the break.</p> <p>12 You've already got a stipulation in the record.</p> <p>13 THE WITNESS: It is for me. That is</p> <p>14 actually a pre-recorded jingle.</p> <p>15 THE COURT: Don't have any discussion with</p> <p>16 your counsel unless you want to break and talk to</p> <p>17 your client.</p> <p>18 Do you want a minute?</p> <p>19 MR. MONAGHAN: May I, Judge?</p> <p>20 THE WITNESS: Yeah.</p> <p>21 THE COURT: Step outside.</p> <p>22 (Pause in the Proceedings)</p> <p>23 (Resumed on the record, in open court -</p> <p>24 counsel and parties present as previously noted)</p> <p>25 THE COURT: Okay, we have 8 through 10 which</p>	<p style="text-align: right;">Page 222</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 performance royalties, et cetera. We're going to</p> <p>3 get there.</p> <p>4 MS. SAFFER: Excuse me, your Honor, I would</p> <p>5 also just like to reiterate that plaintiff's</p> <p>6 counsel had made clear that this does not relate</p> <p>7 to performance royalties and, therefore, BMI is</p> <p>8 not involved in this aspect of the case. It is</p> <p>9 related to the possible sale.</p> <p>10 THE COURT: All right, let's try and keep</p> <p>11 this down so we can get around to cross and then</p> <p>12 some consideration of where we are somewhere down</p> <p>13 the road, but not here in the direct.</p> <p>14 Now, is there any objection to 8 through 10</p> <p>15 going into evidence?</p> <p>16 There being none --</p> <p>17 MR. TANNENBAUM: None.</p> <p>18 MS. PHARES: None.</p> <p>19 THE COURT: -- 8 through 10 are accepted</p> <p>20 into evidence.</p> <p>21 (Plaintiff's Exhibit Nos. 8 through 10,</p> <p>22 marked and received in evidence)</p> <p>23 MR. MONAGHAN: Judge, can I go back to 7 in</p> <p>24 a moment?</p> <p>25 THE COURT: As soon as they are marked.</p>

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 MR. MONAGHAN: Oh, I'm sorry.  
 3 MS. PHARES: Your Honor, I just want to  
 4 clarify. I have no objection, for example, to the  
 5 authenticity of these documents, but I still want  
 6 to make clear my objection as to the germaneness  
 7 and the relevance of these exhibits.  
 8 THE COURT: All right.  
 9 DIRECT EXAMINATION  
 10 BY MR. MONAGHAN: (Continued)  
 11 Q. All right, Exhibit 7, Miss Bryant --  
 12 A. Yes.  
 13 Q. -- which is in evidence, which means you can  
 14 read from any written material on it.  
 15 Now, I would ask you to read the -- can you?  
 16 A. Okay, yes.  
 17 Q. Would you please read the information that  
 18 appears on the bottom after the word "Rhino"?  
 19 MR. TANNENBAUM: Just don't know which one  
 20 that is, the title?  
 21 MS. PHARES: We don't have this.  
 22 THE COURT: 7 is DVD Transformers.  
 23 MR. MONAGHAN: Heroes The Rebirth.  
 24 MR. TANNENBAUM: Thank you. If you could  
 25 just let us know.

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 MR. MONAGHAN: I will do that.  
 3 MR. TANNENBAUM: Thank you.  
 4 A. Program content copyright 19 -- sorry -- 86  
 5 Sunbow Productions, Inc., Wildstar, Inc., Hasbro, Inc.  
 6 All rights reserved. Package artwork design summary  
 7 copyright 2001 Rhino Home Video and AOL Time-Warner  
 8 Entertainment Company. Addresses. All rights  
 9 reserved. And then warnings.  
 10 Q. Okay.  
 11 A. Do you want that?  
 12 Q. Now, did you --  
 13 A. Any authorized --  
 14 Q. You did read the copyright 2001?  
 15 A. Yes, I did.  
 16 Q. Okay. Now, what did you have to do with the  
 17 music that the Court just heard a snippet of in this  
 18 DVD?  
 19 A. I wrote the music, I wrote the arrangement  
 20 and I recorded and conducted the date and produced it.  
 21 And I did it for a jingle and it was the campaign that  
 22 we did on -- that I did on that series of arrangements  
 23 was called Good Guys Bad Guys. GGBG. I also have  
 24 those stubs from those recording sessions.  
 25 Q. You did this as a jingle?

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 A. Yes, the Transformers jingle on the A.F.M.  
 3 jingle code --  
 4 Q. Okay, now --  
 5 A. -- and its Screen Actor's Guild jingle code.  
 6 Q. This was also, by the way, just for the  
 7 record marked at the deposition of Miss Weitzman from  
 8 Sunbow in May 19th, '03.  
 9 MR. TANNENBAUM: Which exhibit number, the  
 10 Weitzman?  
 11 MR. MONAGHAN: It was Exhibit J at the  
 12 Weitzman deposition.  
 13 Q. Now, I'm going to show you now, Miss Bryant,  
 14 Exhibit 8.  
 15 MR. MONAGHAN: Do we have a stipulation on  
 16 Exhibit 8 that is Miss Bryant's music the name of  
 17 it is Transformers The Villains The Ultimate Doom?  
 18 MR. BACAL: Yeah, I mean, if it contains,  
 19 you know, the music that she wrote then it  
 20 contains the music that she wrote. I have not  
 21 heard that particular one. If you let me see the  
 22 package I may be able to stipulate to that.  
 23 MR. MONAGHAN: Is that acceptable, your  
 24 Honor?  
 25 THE COURT: It's your stipulation.

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 Do I take it that at the end of this it is  
 3 all going to come out that these were all  
 4 copyrighted by Sunbow? Or were there other  
 5 people?  
 6 MR. BACAL: Yes, I'm sure Anne wrote the  
 7 main theme through that, yeah.  
 8 MS. PHARES: I just want to make clear that  
 9 this is a soundtrack of the audiovisual work that  
 10 is contained on the DVD.  
 11 THE COURT: Okay, but each and every case of  
 12 this that is shown here ultimately it's going to  
 13 show that Sunbow copyrighted it, right?  
 14 MR. MONAGHAN: Well, the copyright can  
 15 relate to the text. In other words, the copy  
 16 could -- when they put --  
 17 MS. PHARES: Not in 1986 it can't.  
 18 MR. MONAGHAN: I'm talking about the 2001.  
 19 2001 Rhino copyright notice.  
 20 MR. TANNENBAUM: Can we have a side bar? I  
 21 think it might be --  
 22 THE COURT: Let's go off the record. No  
 23 sense having a side bar.  
 24 MR. TANNENBAUM: I don't want the witness to  
 25 hear the question I have, okay?

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CAROL ANNE BRYANT - DIRECT/MONAGHAN

THE COURT: Off the record.

(Discussion off the Record)

(Resumed on the record, in open court)

THE COURT: Back on the record.

What I'm trying to find out folks in my fashion is if the offer now is a series of T.V. Shows that were recorded back -- performed, recorded, whatever the right word is, back in the early eighties or mid-eighties or late eighties and that the -- that those contained music that was written by the Plaintiff but later were copyrighted by Sunbow. Is that where we are at?

MS. PHARES: They were registered for copyright by Sunbow at the time they were created, your Honor. The time they were distributed.

THE COURT: Yeah, but that's the sequence of events.

MS. PHARES: I assume so.

THE WITNESS: Never really heard that until that particular DVD. I didn't know that they were using the jingle that we did for Griffin-Bacal Advertising for Transformers directly on a DVD. That is a union problem.

THE COURT: Well, I'm not taking union

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CAROL ANNE BRYANT - DIRECT/MONAGHAN

increasing frequency now with my client's music without compensation.

THE COURT: Which brings us back to the old saw that is: This is a copyright case?

MS. PHARES: Yes, which I was just about to mention, your Honor. I mean, if we are going to sit here and make interpretations of the Copyright Act, that could not be more squarely within the jurisdiction, the exclusive jurisdiction of the federal court.

MR. MONAGHAN: We're not claiming copyright. We're claiming that our client's music is being sold now. We don't care who has the copyright. Sunbow the publisher, Miss Phares's client, was given -- whether they copyrighted them or not and the record will show that they didn't copyright all this stuff, as far as I can tell I think they only copyrighted JEM songs, the music. In order to copyright, Miss Phares is an expert in the field and lectures in the field, you actually have to have a deposit.

MS. PHARES: No, you do not.

MR. MONAGHAN: All right, she knows more than I do.

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CAROL ANNE BRYANT - DIRECT/MONAGHAN problems today.

Let's -- okay, so now we all understand where we are going. Your position is these were copyrighted as they were done -- as they were -- as the television shows were done back in the eighties, all right?

MR. MONAGHAN: I don't accept that.

THE COURT: What is your position?

MR. MONAGHAN: Well, my position is as far as I can tell we've looked at the copyright records, the fact that it bears a copyright notice in 1986, first of all it is only -- it's only an indication that someone is claiming that they have a copyright, A, and; B, there is another copyright notice 2001.

So the proffer on this, your Honor, if I may, and on the others is this material is being sold currently. The witness testified the last exhibit she got it from Amazon.com. You will see an exhibit later on on what products are available with Miss Bryant's music. So the Defendants are being less than generous when they suggest that they want to stipulate. Our point is that these products are being sold currently and in fact with

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CAROL ANNE BRYANT - DIRECT/MONAGHAN

THE COURT: Please. Please.

MS. PHARES: As a matter of law, a copyright arises at the moment the music is created. Registration is not required, not after January 1st 1978 in the United States of America.

THE COURT: I'll tell you what, you all are doing a great job of trying to help me, I'm sure, but it doesn't work that way. You see, you all know what you are doing. I'm the one that has to decide this case. So let's keep it as simple as we can. That's what I try and do.

Okay, so let's get back to where we're at. Ask the witness a couple more questions.

MR. MONAGHAN: Thank you, your Honor.

THE COURT: And all of those exhibits for whatever they are worth are in evidence.

MR. MONAGHAN: Okay. I would seek a stipulation, but I think Mr. Bacal was not prepared to agree that my client's music --

MR. BACAL: I am prepared to agree that if the song that Anne wrote for the Transformers, the original melody that she wrote for the Transformers is in this DVD, then that's -- she wrote that.



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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 MR. MONAGHAN: That's no stipulation.  
 3 THE COURT: Okay, let's go ahead.  
 4 MR. BACAL: Why?  
 5 MR. MONAGHAN: Because it has an "if". I  
 6 have to show the music is in there.  
 7 Now, we've covered Exhibit --  
 8 THE COURT: 10.  
 9 MR. MONAGHAN: Yes. But we've covered  
 10 Exhibit 7 that was actually played.  
 11 THE COURT: All right. I'll tell you what  
 12 I'm going to do, I'm going to let counsel listen  
 13 to this and decide -- to me, it's a no-brainer.  
 14 If it is in there it belongs to -- not belongs,  
 15 but she is the one that wrote it. If you want to  
 16 listen to it, that's fine with me, but I'm going  
 17 to break for lunch. I'll see you back here at  
 18 1:30.  
 19 MR. MONAGHAN: All right, Judge. Thanks.  
 20 THE COURT: Don't leave until you listen to  
 21 whatever you are going to listen to here because  
 22 I'm not going to listen to it all, with all due  
 23 respect. We're off the record until 1:30.  
 24 (Luncheon Recess: 12:05 p.m.)  
 25 oOo

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 AFTERNOON SESSION  
 3 (Reconvened: 1:30 p.m.)  
 4 (Trial resumes on the record, in open court  
 5 - counsel and parties present as previously noted)  
 6 THE COURT: All right, let's go.  
 7 MR. MONAGHAN: Thank you, Judge.  
 8 CAROL ANNE BRYANT,  
 9 the Plaintiff, previously duly sworn  
 10 by the Court, resumed the stand  
 11 and testified further as follows:  
 12 DIRECT EXAMINATION  
 13 BY MR. MONAGHAN: (Continued)  
 14 Q. All right, Miss Bryant, we spent some time  
 15 on the Transformers and I would like to finish this up  
 16 as quickly as possible.  
 17 A. Yes.  
 18 MR. MONAGHAN: During the break I would like  
 19 to report to the Court -- Miss Phares will report  
 20 to the Court.  
 21 MS. PHARES: We figured is because Mr. Bacal  
 22 is really the only one of us who knows what the  
 23 original programs were and it's going to take  
 24 about four hours to go through them that he'll  
 25 watch them this morning and then we'll report back

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 in the morning just to let your Honor know that  
 3 these are what they were.  
 4 THE COURT: Thank you, Mr. Bacal.  
 5 MR. MONAGHAN: I don't know if I can go  
 6 along with that. It's our evidence. I really --  
 7 I'm not --  
 8 THE COURT: They look trustworthy.  
 9 MR. MONAGHAN: Okay.  
 10 MR. TANNENBAUM: If you want to mark them in  
 11 some way --  
 12 THE COURT: They are marked.  
 13 MR. TANNENBAUM: He's talking about not  
 14 changing the disc.  
 15 THE COURT: Don't make any copies. All  
 16 right, let's go.  
 17 Q. All right, Exhibit 8 I've shown you already  
 18 I believe, Miss Bryant, just to make sure I've picked  
 19 up on this.  
 20 A. The Ultimate Doom. Yes, Weitzman and --  
 21 MR. MONAGHAN: Okay, this will be subject to  
 22 the same conditions and stipulation.  
 23 Q. So I show you now Exhibit 9 in evidence and  
 24 can you identify that, please, for the record?  
 25 A. Special collector's edition of Transformers

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 The Movie. A Sunbow and Marvel production Transformers  
 3 The Movie, starring Eric Idol, Judd Nelson, Leonard  
 4 Nimoy and Orson Welles as Unifron.  
 5 Q. Does the jacket indicate -- well --  
 6 A. Shall I keep reading?  
 7 Q. After Orson Welles please read the  
 8 information on the front jacket.  
 9 A. Music score by Vince DaCola. Story Flint  
 10 Dilly. Written by Ron Friedman. Executive producers  
 11 Margaret Leish and Lee Gunther. Supervising producer  
 12 Jay Bacal. Produced by Joe Bacal, Tom Griffin.  
 13 Co-produced by Nelson Shin.  
 14 MR. MONAGHAN: Can we have a stipulation  
 15 that Mr. Bacal was the producer of the movie which  
 16 is depicted in --  
 17 MR. TANNENBAUM: Can I just see that?  
 18 MR. MONAGHAN: Well, that the Bacals are  
 19 correctly shown.  
 20 MS. PHARES: I just want to see it.  
 21 MR. TANNENBAUM: We think it's right.  
 22 MR. MONAGHAN: Stipulation?  
 23 MR. TANNENBAUM: That the Bacals --  
 24 MR. MONAGHAN: Are correctly characterized.  
 25 MR. TANNENBAUM: Yes.



<p style="text-align: right;">Page 235</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 MR. MONAGHAN: So stipulated, your Honor.</p> <p>3 Q. Okay. Have you had occasion to review the</p> <p>4 music which the Defendants --</p> <p>5 A. I've reviewed that.</p> <p>6 Q. Is there a theme in there?</p> <p>7 A. Yes, in the opening.</p> <p>8 Q. I show you --</p> <p>9 A. I want to make sure I'm clear about that</p> <p>10 that there's additional music, verse music, I think I</p> <p>11 said this yesterday, that leads up to the</p> <p>12 Transformers's Theme that becomes the big whole piece</p> <p>13 anticipatory music, Transformers music moves back down</p> <p>14 and then Transformers Theme.</p> <p>15 Q. You are not claiming you wrote all the</p> <p>16 music.</p> <p>17 A. Yes, that's right, I want to make sure.</p> <p>18 Q. And to what extent is your theme --</p> <p>19 A. Well, it's the highlight of the piece of</p> <p>20 music. You know, we often do that, write a piece of</p> <p>21 music that leads up to another piece of music that is</p> <p>22 well known. The same thing as the GI Joe Theme. We</p> <p>23 did that too.</p> <p>24 Q. I show you Exhibit 10 now in evidence. Let</p> <p>25 me just finish.</p>	<p style="text-align: right;">Page 237</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 A. No. I spent.</p> <p>3 MR. MONAGHAN: I think this is the last of</p> <p>4 the Transformers. Can you mark this -- this is --</p> <p>5 by description, your Honor, this is Transformers</p> <p>6 Volumes 10 to 12. I think this is in VHS format</p> <p>7 referencing Kid Rhino trademark on it, and Sunbow</p> <p>8 Entertainment, a division of SONY Wonder bearing</p> <p>9 dates packaging 2000 Rhino Entertainment Company</p> <p>10 d/b/a Rhino owned video program 1986 Sunbow</p> <p>11 Productions.</p> <p>12 I'll offer that in evidence?</p> <p>13 THE COURT: Has it been marked?</p> <p>14 MR. MONAGHAN: Oh, it has not been marked</p> <p>15 yet?</p> <p>16 MS. PHARES: Once again, I would just ask</p> <p>17 for all of these videos if we can be provided with</p> <p>18 photocopy --</p> <p>19 MR. MONAGHAN: Yes, yes.</p> <p>20 (Plaintiff's Exhibit No. 11, VHS,</p> <p>21 Transformers Volumes 10 to 12, marked for</p> <p>22 identification)</p> <p>23 THE WITNESS: I think you did.</p> <p>24 MR. MONAGHAN: I think you might have. Is</p> <p>25 this the Weitzman -- all right, we'll be glad to</p>
<p style="text-align: right;">Page 236</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 Did you purchase these items, Miss Bryant?</p> <p>3 A. I bought them from Amazon.com.</p> <p>4 Q. When did you do that?</p> <p>5 A. Three, four years ago I bought the</p> <p>6 Transformers's movie.</p> <p>7 Q. And, to the best of your knowledge, are</p> <p>8 these products still available?</p> <p>9 A. Oh, yeah, and many more. This seems to be a</p> <p>10 four disc -- one, two, three, four disc -- six -- no.</p> <p>11 Six disc. One, two, three, four, five-disc set of</p> <p>12 episodes called Transformers's Season 2, Part One.</p> <p>13 Q. Is this also purchased by you?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And to what extent, if you know, is</p> <p>16 your music on this set or in this set?</p> <p>17 A. It's the theme. It's used for the</p> <p>18 television show.</p> <p>19 Q. Do you remember what you paid for these</p> <p>20 items?</p> <p>21 A. They were pretty hefty. I think that was</p> <p>22 about \$50. Some of them are 59.98. Some of them are</p> <p>23 19.98.</p> <p>24 Q. Same question as before: Did you realize</p> <p>25 any monies out of these?</p>	<p style="text-align: right;">Page 238</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 do that.</p> <p>3 MR. TANNENBAUM: My only objection is as to</p> <p>4 relevance. I think Sunbow, but I have no</p> <p>5 objection.</p> <p>6 THE COURT: All right.</p> <p>7 (Plaintiff's Exhibit No. 11, marked and</p> <p>8 received in evidence)</p> <p>9 Q. Did you purchase these items as well?</p> <p>10 A. Yes.</p> <p>11 Q. Do you remember what you paid for them?</p> <p>12 A. No, I don't really remember. I think maybe</p> <p>13 I have a receipt somewhere.</p> <p>14 Q. Okay. And to what extent is your music?</p> <p>15 A. That's the theme. That's the theme for the</p> <p>16 television show.</p> <p>17 Q. Television shows?</p> <p>18 A. Yeah, I think there are several shows on</p> <p>19 each, aren't there?</p> <p>20 Q. Volume 10 Megatrons Master Plan Volume 12,</p> <p>21 Size Matters Volume 11?</p> <p>22 A. Maybe not. Maybe they are single shows.</p> <p>23 There are so many of them.</p> <p>24 MR. MONAGHAN: Same stipulation about</p> <p>25 looking at this or hearing this?</p>

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 MR. TANNENBAUM: Sure.  
 3 MR. MONAGHAN: I'm going to turn to a  
 4 different composition, your Honor. I'm sure you  
 5 are happy to hear that.

6 THE COURT: All right.

7 MR. MONAGHAN: And if I could have Exhibit  
 8 3.

9 Q. Miss Bryant, we're going to talk about the  
 10 JEM songs. And if you would first explain to the  
 11 Court, please, how you became involved at all in  
 12 connection with the JEM songs.

13 A. We were asked to find -- to compete on  
 14 writing a theme for Joe for JEM, which was originally  
 15 called M. It was a project. And we got a treatment, I  
 16 remember, dramatic treatment by the television show  
 17 that was about this rock singer JEM, originally M. Her  
 18 nemesis was Pizzaz. Good Girl Bad Girl in the music  
 19 business and a show about the music business. So we  
 20 were to try to find JEM and try to find Pizzaz, find  
 21 the singers who were to be the main characters, vocal  
 22 characters. And first we found Ellen Burnfeld who is  
 23 right back there, who is Pizzaz. And then -- I don't  
 24 know who JEM is, but that's Pizzaz when he heard her  
 25 doing a certain song. Then our pianist Peter Phillips.

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 Young singer, fabulous, I heard her tape, Joe, you have  
 3 to hear this. He said that's JEM. Then we wrote the  
 4 JEM songs. Picked Joe's lyric and they picked the one  
 5 I wrote. And then we did a demo and we sang it as M  
 6 Truly Outrageous. And then something legal happened,  
 7 they didn't want to use M and they changed it to JEM.  
 8 So we sang it about a month later.

9 Q. When was that?

10 A. 1985. I have the orchestra score so I know  
 11 the date.

12 Q. Was this done for -- for Sunbow?

13 A. Well, it was a Sunbow television show. Joe  
 14 was creative director. He gave out the jobs. And we  
 15 understood, I think, at that point that they were going  
 16 to do a television show first and then shortly after  
 17 that they were going to issue toys. A JEM doll and her  
 18 toys. It was a T.V. show first, unlike Transformers.

19 Q. Unlike the other compositions you've talked  
 20 about.

21 A. Yeah.

22 Q. Okay. Now, ultimately the composition was  
 23 finished and presented to whom?

24 A. To Joe Bacal. And Joe called me up on a  
 25 Saturday. I got a message. Joe Bacal called, said

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2 Annie, they picked your tune.

3 Q. And?

4 A. That was nice.

5 Q. And at some point the T.V. show aired?

6 A. Yes, the T.V. show it went like lightening.

7 All of a sudden we were in production. It seemed to go  
 8 on the air very quickly and then we had ten shares due.

9 And each show had three original feature songs. This  
 10 is a show about the music business. Two for the JEM  
 11 character the good girl and one for the bad girl  
 12 Pizzazz character, and they were competing in the music  
 13 business. There were a lot of values that came through  
 14 the show. A great show. Everybody loved the show and  
 15 still does. And it centered on the music business. So  
 16 when a feature song would come on for one of the main  
 17 characters it would be a little M T.V. I.D. on it  
 18 saying JEM and the holograms we can make a difference,  
 19 whatever the name of the song would be. So very much  
 20 featured songs.

21 Q. What do you mean when you use the phrase  
 22 featured song?

23 A. They were the sole focus of attention. They  
 24 were paid as featured songs in our character just like  
 25 Over The Rainbow is a feature song. I mean, it is a

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 feature song. It's a song.

3 Q. Contrast that with?

4 A. Jingle?

5 Q. Yes.

6 A. Something that has announcer copy in it and  
 7 interruptions and, you know, a lot of selling points.  
 8 This was a song exclusively about being a song about  
 9 the content of the song and they are liveable. I mean,  
 10 they stand on their own as songs. They were not  
 11 oinky-doinky kid songs. They were real songs. They  
 12 were pop songs, rock and roll songs, but they were  
 13 really beautifully produced all around and sung,  
 14 performed by everybody.

15 Q. Have those songs been identified in this  
 16 case thus far, to your knowledge?

17 A. I don't think the songs have. You know,  
 18 there were 154 of them we did.

19 Q. Are they in your catalog --

20 A. Yeah.

21 Q. -- Exhibit 3?

22 A. Yes.

23 Q. Okay. Now, how many songs were there?

24 A. We wrote 154 songs and I did 154  
 25 arrangements. We actually wrote 308 songs because Ford

<p style="text-align: right;">Page 243</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 and I wrote a version on each so -- so that Joe could</p> <p>3 have a choice. And Ford did the piano demos. We sent</p> <p>4 them over to Joe. He chose what he wanted. I got the</p> <p>5 go ahead. And these are next week songs do this</p> <p>6 version. Three of this 1A of that one. And I would</p> <p>7 know which one to do the full arrangement on. Then we</p> <p>8 spent two and a half days in the studio producing the</p> <p>9 JEM show.</p> <p>10 Q. What was your understanding or arrangement</p> <p>11 with respect to your composing these songs?</p> <p>12 A. Financially?</p> <p>13 Q. Financially.</p> <p>14 A. Well, we had an arranging production fee.</p> <p>15 Ford always called it a token fee. \$2200 to do the</p> <p>16 arrangement and the production.</p> <p>17 MS. PHARES: Objection. Hearsay.</p> <p>18 MR. TANNENBAUM: For what Ford called it,</p> <p>19 certainly hearsay.</p> <p>20 THE COURT: I thought the witness was</p> <p>21 testifying to an arrangement she had with Ford.</p> <p>22 Maybe I'm wrong.</p> <p>23 MS. PHARES: No, I don't think so, your</p> <p>24 Honor. I think she was referring to what Mr.</p> <p>25 Kinder said about the arrangement.</p>	<p style="text-align: right;">Page 245</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 A. So much work and -- but it was really</p> <p>3 enjoyable.</p> <p>4 Q. Who represented Sunbow?</p> <p>5 A. Joe. Joe is our creative director.</p> <p>6 MR. TANNENBAUM: Objection.</p> <p>7 THE COURT: What's the objection?</p> <p>8 MR. TANNENBAUM: Represented Sunbow in what?</p> <p>9 THE WITNESS: He's our creative director, I</p> <p>10 just told you.</p> <p>11 MR. TANNENBAUM: Creative director.</p> <p>12 THE COURT: If that's an objection, I don't</p> <p>13 think so. Please let's have objections and not</p> <p>14 interrupt the Plaintiff's case. This is more for</p> <p>15 cross-examination. Thank you. Sit down.</p> <p>16 Go ahead.</p> <p>17 Q. All right, what you just testified to, I</p> <p>18 asked you what your arrangement and understanding was.</p> <p>19 You talked about the creative fees?</p> <p>20 A. Yeah.</p> <p>21 Q. Okay what, if anything, was the</p> <p>22 understanding about any future royalty interests?</p> <p>23 A. We got a royalties as writers. Ford said</p> <p>24 he -- the publishing, he said he would never give us</p> <p>25 the publishing.</p>
<p style="text-align: right;">Page 244</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 MR. MONAGHAN: I'll rephrase the question.</p> <p>3 THE COURT: All right, let's go back.</p> <p>4 Q. What was the agreement or understanding?</p> <p>5 A. All right, we've got \$2200 to do an</p> <p>6 arrangement.</p> <p>7 THE COURT: The agreement and understanding</p> <p>8 with whom.</p> <p>9 Q. Yes, with whom, Miss Bryant?</p> <p>10 A. Well, we billed Sunbow.</p> <p>11 Q. Okay.</p> <p>12 A. You know --</p> <p>13 Q. Did you say you billed Sunbow?</p> <p>14 A. That's who paid the bill was Sunbow. I</p> <p>15 mean, we worked it out in the beginning. We understood</p> <p>16 from Joe what, you know, this is an expensive show to</p> <p>17 produce all around for everybody. The money would only</p> <p>18 be \$2200 for arrangement and production for each song.</p> <p>19 But that was okay.</p> <p>20 Q. Why was it okay?</p> <p>21 A. Because it was really a great show. It was</p> <p>22 so much fun to do that show. It was fabulous. It was</p> <p>23 a nightmare. It was a fabulous nightmare. It was</p> <p>24 great. Hard.</p> <p>25 Q. What?</p>	<p style="text-align: right;">Page 246</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 MS. PHARES: Objection, hearsay.</p> <p>3 THE WITNESS: This is a discussion I had</p> <p>4 with him.</p> <p>5 THE COURT: Hold up. Let's back it up now.</p> <p>6 You can tell us if you had a conversation with</p> <p>7 somebody. Some third-party not in court you can't</p> <p>8 say what they said to you.</p> <p>9 THE WITNESS: Okay. Can I say I had a</p> <p>10 discussion with my partner, an ongoing discussion</p> <p>11 about publishing?</p> <p>12 THE COURT: Yeah.</p> <p>13 THE WITNESS: And we disagreed on</p> <p>14 publishing. I always felt that the client should</p> <p>15 get the publishing. It was fine with me. And he</p> <p>16 always said we should keep the publishing.</p> <p>17 Q. We're not talking publishing right now.</p> <p>18 A. Oh, okay.</p> <p>19 Q. We're talking writer's royalties.</p> <p>20 A. Okay. What ultimately shook down was we got</p> <p>21 the writer's royalties. That was the only money we</p> <p>22 made was to make writer's royalties for writing songs.</p> <p>23 Q. From what sources were these writer</p> <p>24 royalties to come?</p> <p>25 A. This was a T.V. show that was broadcast and</p>



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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 so we were paid writer's royalties that came through  
 3 BMI.  
 4 Q. Okay. And any other source of potential  
 5 writer's royalties?  
 6 A. Oh, there was a lot of potential there.  
 7 Q. From what other sources could these writer's  
 8 royalties --  
 9 A. We didn't know what would happen. We never  
 10 know what is going to happen when something goes on the  
 11 air in the beginning. But we can certainly imagine  
 12 that a show with that many songs, a T.V. show, and it  
 13 is about music, could be a CD and the video market, was  
 14 happening then. They didn't have DVDs yet.  
 15 Q. And what agreements have you ever signed  
 16 where you relinquished any writer royalties?  
 17 A. I never relinquished any writer's royalties.  
 18 Q. Have you ever gotten a farthing -- wrong  
 19 word -- a dime out of any of these videos and CDs that  
 20 we've been talking about?  
 21 A. None of those.  
 22 MS. PHARES: Objection.  
 23 MR. MONAGHAN: DVDs. DVDs. I'm sorry.  
 24 MS. PHARES: It's --  
 25 THE COURT: What is the objection?

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 MS. PHARES: The objection was the  
 3 characterization of the exhibit, your Honor.  
 4 THE COURT: All right.  
 5 MR. MONAGHAN: Okay. Let me show you now if  
 6 I can exhibit -- what would be the next one?  
 7 THE WITNESS: Can I ask a question? No?  
 8 Okay.  
 9 MR. MONAGHAN: If you can mark this as  
 10 Exhibit 12, two-page exhibit.  
 11 (Plaintiff's Exhibit No. 12, JEM Opening  
 12 Theme, marked for identification)  
 13 Q. I show you now Exhibit 12 and ask you if you  
 14 can identify this document.  
 15 MR. MONAGHAN: Actually, can I -- can I  
 16 substitute -- this one has some markings that  
 17 we've cleaned up so I've actually handed my  
 18 working copy. I wonder if I could substitute?  
 19 MR. TANNENBAUM: Do you want these back?  
 20 MR. MONAGHAN: No, I have enough here. I  
 21 have a clean one.  
 22 THE COURT: Yes, you may substitute.  
 23 MR. MONAGHAN: Okay, we'll substitute this  
 24 copy, a clean copy without notes.  
 25 Q. Can you identify, Miss Bryant, Exhibit 12,

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 please.  
 3 A. Yeah, it's broadcast music received  
 4 clearance report on 4/24/97 at 20 54 58. That's the  
 5 time. Submitter SONY A.T.V.  
 6 Q. What song is it?  
 7 A. It's the JEM Opening Theme. It is also  
 8 known as the JEM Vocal Theme.  
 9 Q. Whose music is this?  
 10 A. Joe Bacal 50 percent. Anne Bryant  
 11 50 percent.  
 12 Q. Whose music is this?  
 13 A. Oh, I'm sorry. The music.  
 14 Q. Yes. Please listen to the questions Anne.  
 15 A. Music is Anne Bryant.  
 16 Q. Okay.  
 17 MR. MONAGHAN: We offer this exhibit in  
 18 evidence, your Honor.  
 19 THE COURT: Any objection?  
 20 MR. TANNENBAUM: I'm sorry, no objection.  
 21 MS. PHARES: No objection, your Honor.  
 22 THE COURT: 12 is received in evidence.  
 23 Describe it, please, for the record.  
 24 MR. MONAGHAN: Yes, your Honor, it is a  
 25 Broadcast Music, Inc. clearance report dated

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 April 24th, 1997, referring to the JEM Vocal Theme  
 3 and a/k/a JEM Opening Theme.  
 4 THE COURT: That's enough. And if I can --  
 5 MR. MONAGHAN: If I can hand a copy up to  
 6 your Honor.  
 7 (Plaintiff's Exhibit No. 12, marked and  
 8 received in evidence)  
 9 Q. Miss Bryant, do you have a copy of the  
 10 exhibit in front of you?  
 11 A. Yes.  
 12 Q. Can you please tell the Court how it is that  
 13 Mr. Bacal is shown as receiving a 50 percent interest  
 14 in this composition in light of your testimony that the  
 15 writer's royalties were to be obtained by you  
 16 regardless of Mr. Bacal's contribution?  
 17 A. I don't know how it happened. It says a new  
 18 registration, that's all I can see.  
 19 Q. Did you know this about the time in April of  
 20 1997 that there was a reg --  
 21 A. No.  
 22 Q. When did you actually find out that this  
 23 registration had occurred?  
 24 A. When I got my catalog.  
 25 Q. When was that?



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<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 A. When did we get it? In 2000? And then you</p> <p>3 subpoenaed the clearance that went along with some of</p> <p>4 these entrances and -- enterings.</p> <p>5 Q. Now, Exhibit 3 I'm not sure, because the</p> <p>6 Judge wants me to run through every JEM song entry</p> <p>7 already referenced. The JEM songs you talked about you</p> <p>8 composed they are all referred to in Exhibit 3 the</p> <p>9 catalog?</p> <p>10 A. It says Exhibit 2 here.</p> <p>11 MS. PHARES: 2.</p> <p>12 Q. I'm sorry, Exhibit 2.</p> <p>13 A. Yeah, they are.</p> <p>14 Q. Okay.</p> <p>15 A. I should say Barry Harmon wrote the lyrics.</p> <p>16 It is all the same JEM songs. I don't know if I said</p> <p>17 that.</p> <p>18 Q. So you are not saying that you had anything</p> <p>19 to do with the lyrics, you are talking about the theme</p> <p>20 music, the instrument --</p> <p>21 A. The instrumental. I wrote the music.</p> <p>22 Because the songs -- I wrote the music and Ford wrote</p> <p>23 the music and Barry wrote all the lyrics.</p> <p>24 MR. MONAGHAN: Okay, I've got three -- two</p> <p>25 videos here, VHS videos, I'll ask the reporter to</p>	<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 (Plaintiff's Exhibit No. 14, VHS video JEM</p> <p>3 Volume 2 Fashion Fiasco, marked for</p> <p>4 identification)</p> <p>5 MS. PHARES: No, I don't think we can.</p> <p>6 MR. MONAGHAN: Okay.</p> <p>7 MR. TANNENBAUM: And I wouldn't know.</p> <p>8 MR. MONAGHAN: Okay. That's offered as the</p> <p>9 next Exhibit 14, Plaintiff's 14. I'm sorry, it</p> <p>10 has to be marked first.</p> <p>11 THE COURT: 14 marked for identification.</p> <p>12 MR. MONAGHAN: I offer it. Plaintiff's 14.</p> <p>13 MR. TANNENBAUM: I have no objection.</p> <p>14 MS. PHARES: Once again, I will need a copy</p> <p>15 of this because this was done at Mr. Bacal's</p> <p>16 deposition which when Sunbow was not yet a part of</p> <p>17 this case.</p> <p>18 THE COURT: All right. In evidence.</p> <p>19 (Plaintiff's Exhibit Nos. 13 and 14, marked</p> <p>20 and received in evidence)</p> <p>21 THE COURT: Let's do 15. What's that?</p> <p>22 MR. MONAGHAN: Your Honor, this is a new</p> <p>23 one. New to me anyway. This appears to be a CD</p> <p>24 set.</p> <p>25 MS. PHARES: DVD set.</p>
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<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 mark. One is referencing JEM on the cover.</p> <p>3 Passport to Rock. Previously marked at the Bacal</p> <p>4 deposition as Bacal 6. Referencing on the reverse</p> <p>5 packaging 1999 Rhino Entertainment, d/b/a Rhino</p> <p>6 Home Video Program 1986 Sunbow Productions, Inc.,</p> <p>7 Wildstar Music, Inc., HASBRO, Inc.</p> <p>8 That will be Exhibit 13.</p> <p>9 (Plaintiff's Exhibit No. 13, video</p> <p>10 referencing JEM on the cover, Passport to Rock,</p> <p>11 marked for identification)</p> <p>12 MS. PHARES: Once again, I'm going to ask</p> <p>13 for a copy of this because when Mr. Bacal was</p> <p>14 deposed Sunbow was not in this case. So I will</p> <p>15 need to have, you know, the same photocopies.</p> <p>16 We've never had a copy of this at any deposition.</p> <p>17 MR. MONAGHAN: Okay, that's fine.</p> <p>18 MR. TANNENBAUM: No objection, your Honor.</p> <p>19 MR. MONAGHAN: And Plaintiff's 14 will be</p> <p>20 similar. VHS video JEM Volume 2 Fashion Fiasco,</p> <p>21 which was Bacal 5. And referencing on the reverse</p> <p>22 Rhino Home Video, 1999 packaging Rhino</p> <p>23 Entertainment. And can we stipulate that Rhino</p> <p>24 Entertainment was a licensee, domestic licensee of</p> <p>25 Sunbow?</p>	<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 MR. MONAGHAN: I'm not going to get that</p> <p>3 right. DVD set referencing Truly Outrageous on</p> <p>4 the back and JEM And The Holograms on the front.</p> <p>5 And indicating the complete first and second</p> <p>6 seasons referencing Rhino Home Video on the</p> <p>7 reverse with a program content copyright notice</p> <p>8 1985, six, seven Sunbow Productions, Inc.</p> <p>9 That would be the next exhibit.</p> <p>10 (Plaintiff's Exhibit No. 15, DVD set</p> <p>11 referencing Truly Outrageous, marked for</p> <p>12 identification)</p> <p>13 MR. MONAGHAN: Offering 15.</p> <p>14 MR. TANNENBAUM: Again, I have no objection,</p> <p>15 with the understanding I don't have to say it</p> <p>16 every time that Mr. Monaghan is saying they are</p> <p>17 being produced with respect to Sunbow.</p> <p>18 THE COURT: All right.</p> <p>19 MS. PHARES: Again, I will ask for copies of</p> <p>20 this and I will also repeat the fact that all of</p> <p>21 these DVDs are not part of this case in so far as</p> <p>22 they appear in -- either in the complaint or in</p> <p>23 the Judge's rulings.</p> <p>24 THE COURT: All right, they're admitted into</p> <p>25 evidence, Plaintiff's Exhibit 15.</p>

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<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 MR. MONAGHAN: I just wanted to say that I</p> <p>3 don't agree with the statement by Mr. Tannenbaum</p> <p>4 that they are only being offered against one</p> <p>5 Defendant. That's not so.</p> <p>6 THE COURT: I didn't take a position either</p> <p>7 way.</p> <p>8 MR. MONAGHAN: No, you didn't, but he did.</p> <p>9 THE COURT: They say what they want to say.</p> <p>10 MR. MONAGHAN: Silence is sometimes</p> <p>11 acquiescence.</p> <p>12 (Plaintiff's Exhibit No. 15, marked and</p> <p>13 received in evidence)</p> <p>14 Q. I show you these three videos in the</p> <p>15 interest of expediency. I ask you if you can tell the</p> <p>16 Court, please, to what extent to your knowledge your</p> <p>17 music is involved in any or all of these.</p> <p>18 A. Yes, I've seen all of these. I remember the</p> <p>19 scripts and I wrote the music for the scripts and</p> <p>20 produced all of the music. And in the VHSs the JEM</p> <p>21 Theme was used. Not only front and back but in the</p> <p>22 underscore they used the lead-ups, the tracks that I</p> <p>23 did that were the backing tracks for the vocals very</p> <p>24 often were used as part of the underscore. So they got</p> <p>25 a lot of use out of the music tracks, which was good.</p>	<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 order form, marked for identification)</p> <p>3 Q. Just for the record --</p> <p>4 MR. MONAGHAN: For the record I'll describe</p> <p>5 this. This is an Amazon.com order form that bears</p> <p>6 the name Anne Bryant. Her address in Stony Point,</p> <p>7 New York. It is referencing an order of</p> <p>8 February 15, 2001. And it was previously marked</p> <p>9 at Mr. Bacal's deposition as Exhibit 3 for</p> <p>10 identification. This is Plaintiff's 16 here at</p> <p>11 the trial.</p> <p>12 Q. I'll ask the witness to identify the</p> <p>13 exhibit.</p> <p>14 A. Yes, I remember this.</p> <p>15 Q. Okay. Is that an order you placed with</p> <p>16 Amazon?</p> <p>17 A. Yes.</p> <p>18 Q. And which of the products that we've seen so</p> <p>19 far?</p> <p>20 A. GI Joe Volumes 1 to 3. The three-pack.</p> <p>21 That's it over there. Volume 1 of JEM Passport To</p> <p>22 Rock, Volume 2 of JEM Fashion Fiasco.</p> <p>23 MS. PHARES: Your Honor, I'm not sure this</p> <p>24 is in evidence. I'm also not sure this is a</p> <p>25 business document of this witness. If she wants</p>
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<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 I thought it dramatically worked. And also the</p> <p>3 underscore composer Mr. Walsh played the JEM Theme</p> <p>4 throughout -- throughout the shows. It's part of the</p> <p>5 music library. So I know these. I saw some of the DVD</p> <p>6 which is really wonderful, and so it has 74 of our</p> <p>7 songs on it in the 26 episodes. And what's different</p> <p>8 about each show is that it has the JEM Theme, the</p> <p>9 well-known theme. And it has a lesser known theme at</p> <p>10 the back end of the show called the JEM Girls, which is</p> <p>11 also a theme I wrote. And it's very wonderfully done.</p> <p>12 And there is also a feature in here called The Jukebox</p> <p>13 where you can just play only the songs.</p> <p>14 Q. Say that again, please?</p> <p>15 A. The Jukebox I think it's called. What is it</p> <p>16 called? Where you can play only the songs.</p> <p>17 Q. So you can ignore the visual?</p> <p>18 A. Oh, it's called Play Songs Feature. Here it</p> <p>19 is, where you can just play the songs, like any record.</p> <p>20 Q. Okay, what monies do you realize from the</p> <p>21 sale or distribution of any of these JEM products?</p> <p>22 A. None.</p> <p>23 MR. MONAGHAN: I'm going to ask the reporter</p> <p>24 to mark this as 16.</p> <p>25 (Plaintiff's Exhibit No. 16, Amazon.com</p>	<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 to testify about what she spent on these, that's</p> <p>3 fine, for Sunbow.</p> <p>4 MR. MONAGHAN: It doesn't have to be, your</p> <p>5 Honor. The witness has identified this is the</p> <p>6 order she placed. We're offering it in evidence.</p> <p>7 If they wish to object --</p> <p>8 THE COURT: Well, is it your claim that this</p> <p>9 is part of your damages because Miss Bryant bought</p> <p>10 copies?</p> <p>11 MR. MONAGHAN: Well, it's part of the</p> <p>12 damages because they are marketing it without</p> <p>13 paying her. That's the --</p> <p>14 THE COURT: For whatever limited purpose, I</p> <p>15 will accept it.</p> <p>16 (Plaintiff's Exhibit No. 16, marked and</p> <p>17 received in evidence)</p> <p>18 Q. I'd like to show you now --</p> <p>19 MR. MONAGHAN: Mark this as Exhibit 17.</p> <p>20 (Plaintiff's Exhibit No. 17, four-page</p> <p>21 document dated September 7, 1989, marked for</p> <p>22 identification)</p> <p>23 MR. MONAGHAN: I'm sorry, this would consist</p> <p>24 of four pages, Exhibit 17 so far, for</p> <p>25 identification. The first page is dated</p>

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<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 September 7, 1989 addressed to Anne Bryant.</p> <p>3 Second page is dated January 11, 1990, addressed</p> <p>4 to Anne Bryant. Third page is November 30, 1990</p> <p>5 addressed to Anne Bryant. The fourth page is</p> <p>6 December 20, 1991 addressed to Anne Bryant. I am</p> <p>7 sorry, I don't have copies of this.</p> <p>8 I would like to show it to the witness and</p> <p>9 ask her if she can identify Exhibit 17.</p> <p>10 MR. TANNENBAUM: May we see a copy first?</p> <p>11 THE COURT: Let's get it identified first.</p> <p>12 A. Yes, I remember this.</p> <p>13 Q. Okay, please tell the Court what this</p> <p>14 four-page document consists of?</p> <p>15 A. This was sent to me by Tamad, Mr.</p> <p>16 Dobishinsky's organization, September 7th 1989. The</p> <p>17 date up top is my writing. The little note is Bill</p> <p>18 Dobishinsky's writing.</p> <p>19 Q. You are talking about the first page?</p> <p>20 A. Yes. Sent to me at my place at 41 West 73rd</p> <p>21 Street, New York.</p> <p>22 Q. Actually, these four pages are not the same</p> <p>23 document?</p> <p>24 A. No.</p> <p>25 Q. They are all different?</p>	<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 Q. You have to watch more Law and Order.</p> <p>3 A. I know. I don't watch television.</p> <p>4 The third one is November 30th 1990. Do I</p> <p>5 say that?</p> <p>6 Q. Did you receive this document?</p> <p>7 A. Yes.</p> <p>8 Q. Did you receive each of the other two pages?</p> <p>9 A. Yes.</p> <p>10 Q. Did you receive the fourth page?</p> <p>11 A. Yes.</p> <p>12 Q. Did you receive them roughly sometime</p> <p>13 contemporaneously with the date that is shown?</p> <p>14 A. Yes.</p> <p>15 MR. MONAGHAN: Okay, we offer that exhibit,</p> <p>16 your Honor.</p> <p>17 THE COURT: Show it to opposing counsel.</p> <p>18 MR. TANNENBAUM: I have no objection.</p> <p>19 MS. PHARES: Well, just for background, were</p> <p>20 these sent to the witness --</p> <p>21 MR. MONAGHAN: Wait, this is voir dire?</p> <p>22 MS. PHARES: Yes, this is voir dire.</p> <p>23 THE COURT: Go ahead.</p> <p>24 MS. PHARES: Were these sent to Miss Bryant</p> <p>25 from Mr. Dobishinsky acting as administrator of</p>
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<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 A. No, they are sent to different places.</p> <p>3 MS. PHARES: Objection, leading.</p> <p>4 THE COURT: Sustained.</p> <p>5 MR. MONAGHAN: I'm just trying to speed this</p> <p>6 along.</p> <p>7 A. Okay. They are all -- one is SACEM, Friends</p> <p>8 Distribution Mechanical Royalties with a note congrats</p> <p>9 new royalty source we opened up. That's September 7,</p> <p>10 1989.</p> <p>11 January 11, 1990 is the next one which was</p> <p>12 sent to me at my home in Stony Point. Sacem friends</p> <p>13 distribution for mechanical royalties through</p> <p>14 December 31st, 1988.</p> <p>15 Q. Okay, just --</p> <p>16 A. And it involves -- the first one involves</p> <p>17 JEM.</p> <p>18 Q. Wait one second, Miss Bryant.</p> <p>19 A. And Transformers.</p> <p>20 Q. It has to get into evidence before you can</p> <p>21 read from it.</p> <p>22 A. Oh, it's not in evidence?</p> <p>23 Q. You are identifying it right now.</p> <p>24 A. Oh, okay. I'm sorry, I didn't know it.</p> <p>25 Just identify it. Okay.</p>	<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 your royalties?</p> <p>3 MR. MONAGHAN: This is incorrect type of</p> <p>4 voir dire, your Honor.</p> <p>5 THE WITNESS: Yes.</p> <p>6 MR. MONAGHAN: Voir dire would be only to</p> <p>7 authenticate the document not to do cross.</p> <p>8 THE COURT: I will allow it. The witness</p> <p>9 said yes.</p> <p>10 MS. PHARES: We have no objection, your</p> <p>11 Honor.</p> <p>12 MR. MONAGHAN: Excuse me --</p> <p>13 MS. SAFFER: She's from BMI. There is no</p> <p>14 more room at counsel tables. She is sitting back</p> <p>15 here instead of sitting up there.</p> <p>16 MR. MONAGHAN: I've never tried a case like</p> <p>17 this.</p> <p>18 MS. SAFFER: You know, everybody else has</p> <p>19 their client, your Honor. I apologize, but</p> <p>20 there's no room.</p> <p>21 THE COURT: Please, let's just go forward.</p> <p>22 MS. SAFFER: Okay.</p> <p>23 THE COURT: What is your position on it?</p> <p>24 MS. SAFFER: I'm sorry, I got confused. I</p> <p>25 have no objection.</p>



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 THE COURT: All right. So no one has any objection, so it is admitted into evidence. (Plaintiff's Exhibit No. 17, marked and received in evidence)

THE COURT: Now, it is in evidence. Please explain to me what it is.

MR. MONAGHAN: Well, if I can let Elizabeth mark it.

THE COURT: All right. (Plaintiff's Exhibit No. 17, marked and received in evidence)

MR. MONAGHAN: What it is, your Honor, to the best of my knowledge, and I may stand corrected, this is one of the rare occasions, maybe the only, where there is a reference to mechanical royalties. So the witness received from Sunbow's appointed administrator and through this Sacem France there was a distribution of mechanical royalties during the periods indicated. And there's a fee for the administrator is deducted. There is a reference to the songs JEM Transforms --

MS. PHARES: Is Mr. Monaghan testifying? Objection.

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 MR. MONAGHAN: It is in evidence.

THE COURT: I asked that it be described. I think it is some kind of royalty explanation.

MR. MONAGHAN: Correct, mechanical royalties. Up to now we've been talking about, as far as documents, performance royalties.

THE COURT: All right, counsel.

MS. PHARES: And also there's an objection to Mr. Monaghan's characterization of Mr. Dobishinsky as the Sunbow appointed administrator. There is no evidence in the record to support that.

MR. MONAGHAN: I'm fully prepared they wouldn't let me read the testimony from Sunbow.

THE COURT: You're getting around to it, counsel. If you start arguing about small things, I know they are not small to anybody here, but in the greater scheme of things we have to keep going. Let's go.

Q. Do each of these refer -- each of these do in fact refer to mechanical royalties, correct?

A. Yes.

Q. So there's a reference to \$286.19 in the '89 letter?

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 A. Yes.

Q. Your understanding of that was a mechanical royalty referencing JEM and Transformers?

A. Yes. We got only a part, small part of that, you see.

Q. And why is that?

A. I don't know.

Q. Where did the other royalties go?

A. So it looks like they must have split that between me and Ford. This just went to me personally. And then Bill took a hefty piece of that. 25 percent.

THE COURT: All right, the mechanical royalties are royalties for tapes? Video?

MR. MONAGHAN: That's what we say.

MS. PHARES: Objection, your Honor. Absolutely an objection.

THE COURT: Just tell me you don't agree.

MS. PHARES: Yes, I do not agree.

THE COURT: All right, fine. Thank you. Let's go forward.

MR. MONAGHAN: Okay, Judge, will the Court permit us to take the evidence back and make copies for counsel?

THE COURT: Well, the Defendants look

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 trustworthy, I'll make an exception.

MR. MONAGHAN: Thank you, Judge.

This will be the next exhibit which will be 18.

(Plaintiff's Exhibit No. 18, December 11th 1990 letter, marked for identification)

Q. I show you now Exhibit 18 for identification and ask you if you can identify this document.

A. But not read from it, just identify it.

Q. So far --

A. December 11th 1990 note, letter.

Q. To?

A. Bill Dobishinsky.

Q. To whom?

A. To dear client. He sent this to me. There's no address on it, however. And cover copies sent to Mina Ramatour, Carole Weitzman and Steve Stanley.

Q. Who are the people?

A. They are people who work for Sunbow -- worked for Sunbow.

Q. Did you receive this letter --

A. Yeah.

Q. -- on the date indicated?



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<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 A. Yes. With one of the statements.</p> <p>3 MR. MONAGHAN: We offer this as Plaintiff's</p> <p>4 18.</p> <p>5 MR. TANNENBAUM: I have no objection.</p> <p>6 MS. SAFFER: No objection.</p> <p>7 THE COURT: All right, accepted into -- what</p> <p>8 is it? 18 is accepted in evidence.</p> <p>9 (Plaintiff's Exhibit No. 18, marked and</p> <p>10 received in evidence)</p> <p>11 Q. And reading from Exhibit 18 in evidence:</p> <p>12 Dear client: The enclosed check is your</p> <p>13 share of French broadcast mechanical royalties that</p> <p>14 SDRM has paid to Starwild/Wildstar but which SDRM may</p> <p>15 ask to be returned if SDRM changes its policy regarding</p> <p>16 who is entitled to this type of royalties period by</p> <p>17 endorsing this check you acknowledge that you will</p> <p>18 return these royalties to Starwild/Wildstar if SDRM</p> <p>19 requests the return of such royalties from</p> <p>20 Starwild/Wildstar respectfully bill/with some initials</p> <p>21 and then the name William M. Dobishinsky.</p> <p>22 Do you see that information in Exhibit 18?</p> <p>23 A. Yes.</p> <p>24 Q. Were you ever called upon to return any of</p> <p>25 the royalties which are referred to in Exhibit 18?</p>	<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 exhibits yet have we been able to copy. But we'll</p> <p>3 certainly give you copies.</p> <p>4 Q. There are some handwritten notations on the</p> <p>5 sheet?</p> <p>6 A. Yes.</p> <p>7 Q. Whose are those?</p> <p>8 A. Those are mine.</p> <p>9 Q. And when did you make those?</p> <p>10 Did you make them at the time of this</p> <p>11 litigation or did you make them at some other time?</p> <p>12 A. I made them in 1993 so I could keep my tax</p> <p>13 records straight.</p> <p>14 MR. MONAGHAN: We offer Exhibit 19 in</p> <p>15 evidence.</p> <p>16 MR. TANNENBAUM: I have no objection.</p> <p>17 MR. MONAGHAN: I don't hear --</p> <p>18 THE COURT: No objection.</p> <p>19 MS. PHARES: No.</p> <p>20 MS. SAFFER: No.</p> <p>21 THE COURT: In evidence, 19.</p> <p>22 (Plaintiff's Exhibit No. 19, marked and</p> <p>23 received in evidence)</p> <p>24 Q. And, Miss Bryant, Exhibit 19 in evidence now</p> <p>25 is referring to, is it not, mechanical royalties?</p>
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<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 A. No, no. We continued to get them.</p> <p>3 Q. And who again is Dobishinsky?</p> <p>4 A. He was Sunbow's administrator.</p> <p>5 Q. I would ask the reporter mark Exhibit 19.</p> <p>6 (Plaintiff's Exhibit No. 19, document dated</p> <p>7 January 14th, 1993, marked for identification)</p> <p>8 Q. And I show it to you now it's for</p> <p>9 identification at this point and ask you if you can</p> <p>10 identify the document.</p> <p>11 A. 1993, Tamad Communication. I remember their</p> <p>12 mark. That's their mark.</p> <p>13 Q. To whom?</p> <p>14 A. To me. January 14th, 1993, care of my other</p> <p>15 company Gloryvision in Stony Point.</p> <p>16 Q. Did you receive this letter?</p> <p>17 A. Yes.</p> <p>18 Q. Did you receive anything else with it?</p> <p>19 A. I got a check.</p> <p>20 Q. How much was the check?</p> <p>21 A. \$1,222.05.</p> <p>22 Q. And there are some handwritten notations?</p> <p>23 MS. PHARES: Do you have copies of this</p> <p>24 document?</p> <p>25 MR. MONAGHAN: No. None of the rest of the</p>	<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 A. Yes, from Germany and France. Sacem, SACEM</p> <p>3 France and GEMA Germany distribution for mechanical</p> <p>4 royalties through December 31st, 1992. And this is</p> <p>5 also a gross check to me. I made a note to myself,</p> <p>6 entire amount is A, B gross direct from Tamad. Nothing</p> <p>7 held, nothing due to anyone. Because Ford and I always</p> <p>8 split everything. Sometimes bills in the end started</p> <p>9 splitting them for us. But that was the gross, the</p> <p>10 whole thing was for me.</p> <p>11 Q. SACEM France is what?</p> <p>12 A. I think it is like BMI.</p> <p>13 Q. Performing Rights Society?</p> <p>14 A. Yes.</p> <p>15 Q. GEMA, Germany, same deal?</p> <p>16 A. I just think so. I just don't know.</p> <p>17 MR. MONAGHAN: I ask the reporter to mark</p> <p>18 Exhibit 20.</p> <p>19 (Plaintiff's Exhibit No. 20, song writer</p> <p>20 agreement, marked for identification)</p> <p>21 Q. I'll show you now Exhibit 20 for</p> <p>22 identification and ask you if you can just in a quick</p> <p>23 summary fashion describe what this document is.</p> <p>24 A. It's a song writer agreement between me and</p> <p>25 Wonderland Music. It is Walt Disney Company. First</p>

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<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 writing songs for record --</p> <p>3 Q. And can you go to the signature page. Whose</p> <p>4 signature is on there?</p> <p>5 A. I signed it.</p> <p>6 Do you want the date?</p> <p>7 Q. Yes, please.</p> <p>8 A. I signed it on the 14th of August, 1990.</p> <p>9 And it was notarized.</p> <p>10 Q. Okay.</p> <p>11 MR. MONAGHAN: We offer Exhibit 20, which is</p> <p>12 a song writer's agreement, March 28th, 1990 by and</p> <p>13 between Wonderland Music and Anne Bryant writer.</p> <p>14 MS. PHARES: Objection, your Honor, on</p> <p>15 relevance. This is a song writer's agreement. It</p> <p>16 is not an agreement with respect to T.V.</p> <p>17 production. And your Honor noted in the last</p> <p>18 decision of this Court that this has extremely</p> <p>19 marginal relevance because of the fact that it is</p> <p>20 a signed recording agreement.</p> <p>21 THE COURT: Well, tell me about the</p> <p>22 relevance. This agreement is not with any of the</p> <p>23 named Defendants here.</p> <p>24 MR. MONAGHAN: That's correct.</p> <p>25 THE COURT: So what's the relevancy?</p>	<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 the agreement, but it isn't coming in as a</p> <p>3 surprise. They've seen it. So I ask it be</p> <p>4 admitted for whatever purpose your Honor might</p> <p>5 give it.</p> <p>6 MS. PHARES: Your Honor, this entire</p> <p>7 proceeding relates to T.V. production.</p> <p>8 MR. MONAGHAN: It does not.</p> <p>9 MS. PHARES: It is a different business. It</p> <p>10 is not the commission of work for a record company</p> <p>11 which is a different business. And it's not a</p> <p>12 relevant agreement for the purposes of the issues</p> <p>13 before this Court. And I think --</p> <p>14 THE COURT: I will tell you what --</p> <p>15 MS. PHARES: I think your Honor recognized</p> <p>16 that.</p> <p>17 THE COURT: -- I'm going to take a break and</p> <p>18 I'll take this with me. I'll take a look at it.</p> <p>19 MR. MONAGHAN: Sure.</p> <p>20 COURT OFFICER: You can step down.</p> <p>21 (Recess: 2:30 p.m.)</p> <p>22 (Resumed: 2:45 p.m.)</p> <p>23 (Resumed on the record, in open court -</p> <p>24 counsel and parties present as previously noted)</p> <p>25 CAROL ANNE BRYANT,</p>
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<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 MR. MONAGHAN: The relevance is that it</p> <p>3 establishes -- this was attached to the motion</p> <p>4 papers previously.</p> <p>5 THE COURT: Yeah.</p> <p>6 MR. MONAGHAN: This was witness's business</p> <p>7 custom and practice in terms of writer royalties,</p> <p>8 that even though under this agreement there is</p> <p>9 this reference to work-for-hire and copyright, she</p> <p>10 nonetheless kept her writer royalties.</p> <p>11 THE COURT: Okay, but along the line here we</p> <p>12 come up with an agreement that, my recollection</p> <p>13 is, that it wasn't signed.</p> <p>14 MR. MONAGHAN: No, this one -- yeah, you are</p> <p>15 right, that is the JEM -- the JEM unsigned.</p> <p>16 THE COURT: If you are saying this is the</p> <p>17 normal procedure and practice of this witness to</p> <p>18 sign it, why shouldn't I assume that that one was</p> <p>19 signed?</p> <p>20 MR. MONAGHAN: Well, because if the normal</p> <p>21 practice is for her to reserve her writer</p> <p>22 royalties she would have reserved them</p> <p>23 notwithstanding any written agreement that they</p> <p>24 claimed was signed. So I agree that there's a</p> <p>25 question of what weight your Honor wants to accord</p>	<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 the Plaintiff, previously duly sworn</p> <p>3 by the Court, resumed the stand</p> <p>4 and testified further as follows:</p> <p>5 MS. PHARES: Your Honor, to the extent that</p> <p>6 this document is admitted solely for the purpose</p> <p>7 of showing that Miss Bryant reserved her right to</p> <p>8 public performance royalties in a written</p> <p>9 document, we would withdraw our objection.</p> <p>10 MR. TANNENBAUM: Yes, your Honor.</p> <p>11 THE COURT: Actually, I'll tell you the</p> <p>12 truth, I was going to admit it on that basis, but</p> <p>13 I will tell you that I find -- I think I saw this</p> <p>14 in one of the motion papers. But, you understand,</p> <p>15 the motion papers disappear out of here once I</p> <p>16 write a decision. They are down in the County</p> <p>17 Clerk's Office, so I don't have those to go back</p> <p>18 to.</p> <p>19 But this is a reservation of public</p> <p>20 performance royalties throughout the world by Miss</p> <p>21 Bryant. But what gets me, interests me is that</p> <p>22 Paragraph 2 gives to the publisher every right</p> <p>23 existing or that shall exist to the end of the</p> <p>24 world including the copyrights and extensions of</p> <p>25 copyrights and all compositions and arrangements,</p>



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so that the only thing left is the -- that  
verbiage, writer's performance royalties.

Is that what we are talking about?

MR. MONAGHAN: No, I don't believe it is. I  
believe it reserves all writer royalties.

THE WITNESS: Mechanicals.

MR. MONAGHAN: Mechanicals. All types.

THE COURT: Well, E says, Writer shall  
receive his or her performance royalty -- public  
performance royalties throughout the world  
directly from his or her own affiliated performing  
rights society. Writer shall not have any claim  
whatsoever against the publisher for any royalties  
received by the publisher from any performing  
rights society which makes payments directly or  
indirectly other than through publisher to  
writers, authors and --

If, however, to the extent publisher shall  
collect both the writer's and publisher's share of  
performance income directly and such income shall  
not be collected by the writer's public  
performance society, publisher shall pay to the  
writer as the so-called writer's share thereof,  
fifty percent of all net sums which are received

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by the publisher in the United States from  
exploitation of such rights in the compositions  
throughout the world.

MR. MONAGHAN: Right, but that language  
is -- if the -- if for some reason or another the  
publisher's share gets sent to the writer, the  
writer's agreeing.

THE COURT: The thing I see here is  
reservation simply of public performance  
royalties. You are telling me it also includes  
mechanicals?

MR. MONAGHAN: That is our understanding.

THE COURT: Well, there you go. Show me. I  
could be wrong. I went through it fast.

THE WITNESS: I can show him.

MR. MONAGHAN: It is admitted. The  
witness --

THE COURT: Yeah.

MS. PHARES: Your Honor, if we're going to  
be complete about this, I would like to draw your  
attention to Exhibit A of the document.

THE COURT: That's what I was reading from.

THE WITNESS: That was all the different  
kinds of royalties I get.

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THE COURT: Where? What?

THE WITNESS: Song writer royalties you were  
reading from.

THE COURT: I read from it. That's E?

THE WITNESS: Exhibit A.

MS. PHARES: And we are saying that we will  
consent to the -- we will withdraw objection to it  
except to the extent that it's being admitted to  
show that Miss Bryant reserved her public  
performance royalties in a written contract.

THE COURT: Well, it is admitted in  
evidence.

MR. MONAGHAN: Just to answer your question,  
your Honor --

THE COURT: Yeah.

MR. MONAGHAN: -- Exhibit A --

THE COURT: Yes.

MR. MONAGHAN: -- of this --

THE COURT: Right.

MR. MONAGHAN: -- says as follows: Song  
writer royalties --

THE COURT: Right.

MR. MONAGHAN: -- 50 percent of --  
Subsection A of Exhibit A, 50 percent of any and

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all -- of any and all net sums actually received  
by publisher in the U.S. from the sale of sheet  
music and the compositions printed, published and  
sold in the U.S. and Canada, et cetera, et cetera.

B, 50 percent of any and all net sums  
actually received by publisher in the U.S. from  
the sale of any folio, song book or similar  
publication, et cetera, et cetera.

C, 50 percent of any and all net sums  
actually received by publisher from the  
exploitation in the U.S. and Canada by licensees  
of publisher of mechanical rights, electrical  
transcription and reproducing rights, motion  
picture and television synchronization rights and  
all other rights in the compositions.

THE COURT: All right, missed it. It is in  
evidence in any case.

MS. PHARES: I'm still going to make the  
original objection then, your Honor, with respect  
to the fact this is a song writer's agreement. It  
is not -- it is not an agreement commissioning  
music for a television program.

THE COURT: And the only thing I'm taking it  
for is the fact in this agreement Miss Bryant



<p style="text-align: right;">Page 279</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 reserved her rights, whatever they were, in the</p> <p>3 agreement.</p> <p>4 Let's go ahead.</p> <p>5 MR. MONAGHAN: Thanks, Judge.</p> <p>6 (Plaintiff's Exhibit No. 20, marked and</p> <p>7 received in evidence)</p> <p>8 MR. MONAGHAN: This would be better through</p> <p>9 a different witness, your Honor.</p> <p>10 (Plaintiff's Exhibit No. 21, an arrangement,</p> <p>11 premarked for identification)</p> <p>12 MR. MONAGHAN: Just for the record -- I</p> <p>13 think we may have given this to you already, but</p> <p>14 it is musical notation.</p> <p>15 Q. Is that a correct characterization?</p> <p>16 A. It's an arrangement.</p> <p>17 MR. MONAGHAN: It is Exhibit 21 referencing</p> <p>18 the JE in JEM is not there, the M is there, M</p> <p>19 Theme Outrageous T.V. And Miss Bryant's name</p> <p>20 appears up top.</p> <p>21 THE WITNESS: And the date.</p> <p>22 MR. MONAGHAN: And the date is March 7th</p> <p>23 1985.</p> <p>24 THE WITNESS: That's --</p> <p>25 MR. MONAGHAN: I'll show it to the witness.</p>	<p style="text-align: right;">Page 281</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 1985.</p> <p>3 MR. TANNENBAUM: Thank you.</p> <p>4 MR. MONAGHAN: Okay? I'm going to ask the</p> <p>5 reporter to mark 22.</p> <p>6 (Plaintiff's Exhibit No. 22, printout from</p> <p>7 the Amazon.com, marked for identification)</p> <p>8 Q. I show --</p> <p>9 MR. MONAGHAN: Which, for the record,</p> <p>10 appears to be a printout from the Amazon.com</p> <p>11 website, multiple pages. First page refers to</p> <p>12 Transformers Villains. Bears a printout date of</p> <p>13 09/02/2002.</p> <p>14 THE COURT: Do we have any problem with the</p> <p>15 fact that this was available in 2002 and may well</p> <p>16 be available today?</p> <p>17 MR. TANNENBAUM: I'm sorry, your Honor, I'm</p> <p>18 not sure I understand your question.</p> <p>19 MR. MONAGHAN: The Judge's question is do we</p> <p>20 have a problem with the point that these products</p> <p>21 are available even today.</p> <p>22 MS. PHARES: Well, I think the question was</p> <p>23 do we have a problem with whether or not they were</p> <p>24 available in 2002 and may be available even today.</p> <p>25 THE COURT: Yeah.</p>
<p style="text-align: right;">Page 280</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 Q. I'll ask her if she can identify it.</p> <p>3 A. That is my arrangement. JEM Theme formally</p> <p>4 called M Theme.</p> <p>5 Q. What is the reference to Outrageous?</p> <p>6 A. Well, the line in the song was Truly</p> <p>7 Outrageous.</p> <p>8 Q. Right. Which is the same as the reference</p> <p>9 on the reverse of -- same as referred to on the back of</p> <p>10 Exhibit 15?</p> <p>11 A. Truly Outrageous.</p> <p>12 Q. Okay, in whose hand is this?</p> <p>13 A. This is my hand.</p> <p>14 MR. MONAGHAN: Okay, we offer that exhibit</p> <p>15 in evidence, your Honor. Exhibit 21.</p> <p>16 THE COURT: All right.</p> <p>17 MR. TANNENBAUM: No objection.</p> <p>18 MS. PHARES: No objection.</p> <p>19 THE COURT: All right, admitted into</p> <p>20 evidence.</p> <p>21 (Plaintiff's Exhibit No. 21, marked and</p> <p>22 received in evidence)</p> <p>23 MR. TANNENBAUM: I'm sorry, can you tell me</p> <p>24 the date on top of the document?</p> <p>25 MR. MONAGHAN: I think I said March 7th,</p>	<p style="text-align: right;">Page 282</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 MR. MONAGHAN: Okay, that's fine.</p> <p>3 MR. TANNENBAUM: I'm sorry, I got lost for a</p> <p>4 second. I apologize.</p> <p>5 THE COURT: Let's do it the way you do it.</p> <p>6 Show it to them and see.</p> <p>7 MR. MONAGHAN: Well, we have a later</p> <p>8 printout actually for today.</p> <p>9 MR. TANNENBAUM: Oh, I see. No objection.</p> <p>10 I'm sorry.</p> <p>11 MS. PHARES: You want to know if they've</p> <p>12 been sold in the last three or four years.</p> <p>13 MR. TANNENBAUM: If they are still on the</p> <p>14 website for sale. No objection.</p> <p>15 MR. MONAGHAN: All right, why don't we --</p> <p>16 MS. PHARES: We have no objection to that --</p> <p>17 to that fact.</p> <p>18 MR. MONAGHAN: Okay, I have a more complete</p> <p>19 Amazon.com printout dated July 4th. We were</p> <p>20 working over the weekend, if you may recall,</p> <p>21 getting documents and whatever.</p> <p>22 THE COURT: Okay, now this is now 23.</p> <p>23 MR. MONAGHAN: This will be 23.</p> <p>24 (Plaintiff's Exhibit No. 23, printout dated</p> <p>25 July 4th, marked for identification)</p>

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THE COURT: All right, 22 is in and 23 is the same thing but July 4th. Any objection?

MR. TANNENBAUM: No objection.

MS. PHARES: No, your Honor.

THE COURT: That is in evidence.

MR. MONAGHAN: I have to expand the description, however, Judge on 24. It is more than just Transformers.

(Plaintiff's Exhibit Nos. 22 and 23, marked and received in evidence)

MR. MONAGHAN: We'll describe Exhibit 23, your Honor. I caused Exhibit 23 to be prepared and run. Someone under my direction, i.e. my daughter Eileen. Went onto a website, printed out all of the various products, Transformers, GI Joe, JEM. I believe it's complete, but I was going to call her as a witness to do that. JEM, JEM, Strawberry Shortcake. But I would actually like to have the witness go through it to make sure I've got them all.

THE COURT: Has it been marked?

MR. MONAGHAN: It's been marked 23 in evidence.

THE COURT: Well, let the witness go through

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it. Okay, maybe I'm wrong.

MR. MONAGHAN: It's not in. Not yet.

THE COURT: 22 went in. I hope you paid your daughter. If she's here we're going to ask her.

MS. PHARES: Your Honor, some of the GI Joe shows were produced by organizations other than Sunbow. And I have no way of knowing from these documents whether the particular DVDs that are being sold are Sunbow Productions or not. So I'm not trying to hold things up, but I want you to be aware of the fact that the fact that a particular Transformers DVD is for sale may be interesting, but may have no bearing on any income being made by Sunbow Productions.

THE COURT: The only way I would take it is that it shows the music that the Plaintiff wrote at some time or another is still being made available through these outlets. I'm not at this point saying that it's Sunbow's obligation. That has not been proved one way or another.

MS. PHARES: Well, see, the problem is with the deep productions they did their own music to GI Joe.

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THE COURT: So the music isn't the same.

MS. PHARES: It's not the same music. The fact that a Transformers work is being sold does not evidence the fact that her music is necessarily being used. And that's the problem is that these Amazon.com printouts don't indicate who the producer is or which version we are talking about. So I really am not in a position to stipulate to this. And, frankly, I think it's -- it would be misleading to put this in evidence.

THE COURT: Okay, what do you say to this?

MR. MONAGHAN: What I say to this, we're going to establish, and I think we have, that the only party who could have licensed these products is Sunbow. Every one of these other videos, I believe, and DVDs mentions Sunbow. We have -- we have not brought them in evidence yet because we need a proper person, but there are Sunbow licenses, Kid Rhino. They are entitled to try and bring it out on cross whatever they want to bring out but those products are now available on the market.

MR. TANNENBAUM: You are missing the point. There are some GI products not produced by Sunbow

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and some -- let me finish -- didn't have Miss Bryant's music in it. To the extent they appear in their catalog it has nothing to do with this case.

MR. MONAGHAN: Fair enough. But we have not gotten to GI Joe set actually.

MS. PHARES: Well --

THE COURT: I'll tell you what, I'm going to allow them in for the limited purpose of showing that these titles, some of which may have the music of the Plaintiff in them are still available for purchase.

MS. PHARES: But these all may not show that.

THE COURT: Your point is taken.

MS. PHARES: Okay.

MR. MONAGHAN: This will be 24.

(Plaintiff's Exhibit No. 24, five-page document dated May 23, 2001, marked for identification)

Q. I show you now 24 for identification which consists of -- it looks like five pages with the date on the bottom of May 23rd, '01, and referencing BMI catalog on the top left, and Transformers Vocal Theme

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 on the first page.  
 3 I ask you if you can identify this document.  
 4 A. Okay, Transformers Vocal Theme 2 --  
 5 MS. PHARES: Your Honor, we have to see the  
 6 exhibits. This is -- this is extremely difficult.  
 7 MR. MONAGHAN: No, that isn't how it works.  
 8 My understanding -- my understanding --  
 9 THE COURT: Hold on. Hold on. The first  
 10 thing with any document it gets marked for  
 11 identification. It gets shown to the witness. If  
 12 the witness identifies it as something then if  
 13 there's a motion to put it into evidence at which  
 14 point it has to be shown to opposing counsel, not  
 15 before that.  
 16 Let's go forward.  
 17 MR. MONAGHAN: Thank you, Judge.  
 18 A. Okay, Transformers Vocal Theme.  
 19 Q. Don't read. Don't read yet.  
 20 Can you identify this document? What is it?  
 21 What do you know about it?  
 22 A. I don't know how to answer. BMI Catalog  
 23 Page 1. The working title of Transformers Vocal Theme  
 24 2.  
 25 Q. How is this document here in court? Do you

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 know how it got here? Did you get it?  
 3 A. Somehow I got it. It looks like I printed  
 4 it out.  
 5 Q. Okay. What does this have to do with you  
 6 and the songs at issue in the case?  
 7 A. Well, it says there's a registration here  
 8 and it has Joe's name, Anne's name and Ford's name in  
 9 the 8.3 percent -- 8.3 --  
 10 Q. What compositions are being talked about?  
 11 A. The Transformers Opening Theme.  
 12 Q. All four pages?  
 13 Just so you understand, maybe it will help a  
 14 little bit when we are trying to establish a foundation  
 15 for getting it in, we're talking about authenticity.  
 16 If you know what it is, you received it, you sent it,  
 17 you obtained it, that is the first subject matter.  
 18 A. Oh, this is from Ford's catalog. He gave me  
 19 this.  
 20 Q. Okay. You got this from Ford Kinder's  
 21 catalog?  
 22 A. Yes. This is his handwriting.  
 23 Q. Is that all four pages -- five pages?  
 24 A. It looks like six to me.  
 25 Q. Six.

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 A. All Transformers. All five pages. So I  
 3 guess from the Ford catalog.  
 4 Q. You recognize the handwriting?  
 5 A. Yeah.  
 6 MR. MONAGHAN: We offer that as Exhibit 24.  
 7 THE COURT: Is this duplicative of 2?  
 8 Plaintiff's 2?  
 9 MR. MONAGHAN: Some of the information in 2  
 10 is in this, but this bears a more current -- more  
 11 current date. I think we've also provided this to  
 12 the Defendants already under Bate Stamp 699 to 703  
 13 in our document production.  
 14 MR. TANNENBAUM: We have no objection, your  
 15 Honor.  
 16 MS. PHARES: Is this one exhibit?  
 17 MR. MONAGHAN: Yes.  
 18 MS. SAFFER: No objection, your Honor.  
 19 THE COURT: All right. Okay, so 24 is in  
 20 evidence and now you can tell us what it is.  
 21 (Plaintiff's Exhibit No. 24, marked and  
 22 received in evidence)  
 23 MR. MONAGHAN: Your Honor, this is a  
 24 document, as I said, dated May 23rd '01. And it  
 25 has the breakdown and referencing the Transformers

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 opening theme. It does have the same percentages  
 3 your Honor has already heard about that 8.3 to  
 4 Bacal. 8.3 to Miss Bryant.  
 5 MS. PHARES: Your Honor, is there a question  
 6 pending?  
 7 MR. MONAGHAN: The Judge just asked me to  
 8 tell him what it is. Maybe you didn't hear that.  
 9 MS. PHARES: It didn't sound like you were  
 10 telling him what it was.  
 11 MR. MONAGHAN: I was. I was reading from  
 12 the first page. It is in evidence.  
 13 The second page refers to -- by the way,  
 14 your Honor, it also references a BMI work number  
 15 and a date of registration of April 28th, 1997.  
 16 So, as a proffer, we are bringing these  
 17 things forward from the original registration  
 18 dates.  
 19 MR. TANNENBAUM: I object to whatever that  
 20 was.  
 21 THE COURT: I have not agreed to anything.  
 22 It was a statement made by counsel.  
 23 MS. SAFFER: Yes, and we're objecting to his  
 24 characterization or his analysis of what that  
 25 document says.



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<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 THE COURT: I don't accept his evidence.</p> <p>3 MS. SAFFER: Thank you.</p> <p>4 THE COURT: Go ahead.</p> <p>5 MR. MONAGHAN: The second page is dated the</p> <p>6 same date, April 28th 1997. Same percentages</p> <p>7 sharing talking about a different -- no, it is</p> <p>8 talking about the same thing, Transformers Opening</p> <p>9 Theme third page. Has a different date 8/25,</p> <p>10 1994. And it's referring to the Transformers</p> <p>11 Theme Opening. And a fourth, last page, refers to</p> <p>12 Transformers BG cues.</p> <p>13 Q. Now, BG cues, Miss Bryant.</p> <p>14 A. Background.</p> <p>15 Q. Tell the Judge, please.</p> <p>16 A. Background cues. Background music.</p> <p>17 Q. Okay. Now, Page 1 mentions vocals, so</p> <p>18 presumably there is some lyrics in that?</p> <p>19 A. Yes, yes.</p> <p>20 Q. But also your theme?</p> <p>21 A. Yes.</p> <p>22 Q. Page 2 also refers to vocal theme?</p> <p>23 A. They are all my music.</p> <p>24 Q. Understood.</p> <p>25 But Page 3 which shows Mr. Bacal getting</p>	<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 the future and I'm sure he will do that.</p> <p>3 MR. MONAGHAN: Thank you, Judge.</p> <p>4 MS. SAFFER: Could we see it at least?</p> <p>5 MR. MONAGHAN: Yes. This was produced, it</p> <p>6 has Bate Numbers. We produced it previously. But</p> <p>7 I'm happy to give you a copy.</p> <p>8 (Pause in the Proceedings)</p> <p>9 THE COURT: All right, let's go ahead.</p> <p>10 Q. Now, if I can show you now, Miss Bryant --</p> <p>11 MR. MONAGHAN: I'm going to ask the reporter</p> <p>12 to mark these as the next two in sequence. And,</p> <p>13 for the record, the next one will be series of</p> <p>14 three boxed videos set, I think they call them box</p> <p>15 set; is that accurate? Referencing GI Joe Volume</p> <p>16 One World Without End, Volume 2 Revenge Is Not</p> <p>17 Always Sweet, Volume 3 Crime Doesn't Pay.</p> <p>18 And, just for the record this was previously</p> <p>19 exhibited to Defendants at the Weitzman deposition</p> <p>20 on May 19th '03, marked as Exhibit F at that</p> <p>21 deposition. So this would be the next Plaintiff's</p> <p>22 exhibit.</p> <p>23 And 26, for the record, Judge, is a DVD GI</p> <p>24 Joe The Movie in the case referencing on the cover</p> <p>25 Sunbow and Marvel Production GI Joe starring Don</p>
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<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 8.3 percent or credited with at least at that point in</p> <p>3 time, which is 1998, this is the Transformers Theme</p> <p>4 Opening; is that instrumental or with lyrics?</p> <p>5 A. It would be sung.</p> <p>6 Q. And, likewise, the next page, is that right,</p> <p>7 Transformers Theme Open?</p> <p>8 A. That would be sung as well.</p> <p>9 Q. How about the last one, background cues?</p> <p>10 A. Background cues are under actually --</p> <p>11 Q. Lyrics?</p> <p>12 A. No.</p> <p>13 Q. That's just --</p> <p>14 A. Under dialogue too often.</p> <p>15 Q. Okay.</p> <p>16 MS. SAFFER: Your Honor, just as sort of</p> <p>17 general observation, please, it is very difficult,</p> <p>18 we don't have copies of these documents and he's</p> <p>19 reading and referring to them and we don't have</p> <p>20 the opportunity to -- we've never seen them or to</p> <p>21 respond appropriately.</p> <p>22 THE COURT: Well, apparently there was some</p> <p>23 last minute discovery here on both sides. I don't</p> <p>24 know what happened, but we are here, we are trying</p> <p>25 this case. Counsel said he would get copies for</p>	<p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 Johnson, Burgess Meredith, Sergeant Slaughter,</p> <p>3 Buzz Dickson. Written by Ron Friedman. Executive</p> <p>4 producers Margaret Rose Gunther. Supervising</p> <p>5 producer Joe Bacal. Produced by Joe Bacal, Tom</p> <p>6 Griffin. Co-producer, director John Bervich.</p> <p>7 Music by Ford Kinder, Spence Michelin. Lyrics by</p> <p>8 Barry Harmon. Additional music by Robert Walsh,</p> <p>9 John Douglas. Bearing a date on the reverse with</p> <p>10 Rhino Home Videos name 2000 packaging and 1987</p> <p>11 copyright notice by Sunbow Productions,</p> <p>12 Inc./HASBRO Inc. That is Exhibit 26.</p> <p>13 And if I may return to the description of 25</p> <p>14 I neglected to mention that on the box it</p> <p>15 references Kid Rhino. Sunbow Entertainment.</p> <p>16 Rhino Home Video. Packaging 1999 Rhino</p> <p>17 Entertainment. And it mentions Sunbow Productions</p> <p>18 Wildstar Music/HASBRO.</p> <p>19 (Plaintiff's Exhibit No. 25, series of three</p> <p>20 boxed videos set, marked for identification)</p> <p>21 (Plaintiff's Exhibit No. 26, DVD GI Joe The</p> <p>22 Movie, marked for identification)</p> <p>23 BY MR. MONAGHAN:</p> <p>24 Q. Miss Bryant, did you have occasion to</p> <p>25 purchase these items?</p>

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN

2 A. Yes, I got them from Amazon.

3 Q. Through Amazon.com?

4 A. Yes.

5 Q. Have we seen the receipt for this already?

6 A. Yes, I think we did.

7 Q. And whose music is on GI Joe?

8 A. This is -- Ford Kinder wrote this song.

9 Q. And what rights do you have, if any, to

10 claim anything with respect to GI Joe?

11 A. That was part of my catalog that Dobishinsky

12 put it in my catalog in 1985. Dobishinsky. '85, six

13 without my permission, but it was there, and so it was

14 an artifact in my catalog for a long time. When the

15 check would come in I would just give it to Ford. It

16 wasn't mine. And when Ford and I settled Kinder and

17 Bryant he said, you know, how about you keep GI Joe and

18 that settles our company. And that was my item of

19 settlement was in my catalog and I was entitled to

20 claim it so --

21 Q. We're talking only about performance

22 royalties here; is that right?

23 A. Yeah, I think so. I mean --

24 Q. With respect to GI Joe?

25 A. Yes.

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN

2 Q. We're not talking about royalties other than

3 performance royalties?

4 A. No. Although -- he's okay about me claiming

5 it.

6 Q. Yes.

7 MS. PHARES: I didn't hear that.

8 MR. TANNENBAUM: I didn't hear that.

9 THE WITNESS: He's okay about me claiming

10 it. But I would -- I don't know.

11 THE COURT: Is it part of this lawsuit or

12 not?

13 THE WITNESS: It is.

14 MR. MONAGHAN: Okay.

15 THE WITNESS: It is in my catalog.

16 THE COURT: All right.

17 THE WITNESS: It got moved around from my

18 catalog.

19 MR. MONAGHAN: Actually I know what you

20 are -- I know I messed up on something, and I'm

21 sure my colleagues will pick me up on it very

22 quickly.

23 Q. Let me ask you that same question again.

24 As we stand here and sit here today what

25 rights do you have to pursue claims for royalties on GI

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN

2 Joe?

3 A. I've been authorized to pursue these claims.

4 Q. You got the performance rights from Mr.

5 Kinder in 1993 when you settled with him?

6 A. Yes.

7 MR. TANNENBAUM: Objection. Leading.

8 MR. MONAGHAN: She already said --

9 THE COURT: I'll allow it.

10 Q. Okay, have you obtained any other rights or

11 authority with respect to any other royalties on GI

12 Joe?

13 A. Yes.

14 Q. And how did you get that and when did that

15 occur?

16 A. I spoke to Ford a couple of months ago and I

17 felt that I had the right to claim these and I would be

18 happy to claim them, but I don't want the money, I want

19 him to have it. So he authorized me to claim anything

20 for him that was appropriate --

21 MS. PHARES: Objection.

22 A. -- from our company.

23 MS. PHARES: Your Honor, this witness

24 doesn't have standing to assert Mr. Kinder's

25 rights.

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN

2 THE COURT: I assume we're going to have

3 some kind of a written document?

4 MR. MONAGHAN: There is a written document.

5 MR. TANNENBAUM: I hardly know the way to

6 begin on this one.

7 MR. MONAGHAN: I'll show it to him.

8 MR. TANNENBAUM: The witness didn't write

9 the music. She admits she didn't write the music.

10 She admits it was mistakenly in her catalog. And

11 Mr. Dobishinsky was mistakenly paying her.

12 THE WITNESS: It wasn't mistaken. I didn't

13 say that.

14 THE COURT: Sounds like you are

15 cross-examining counsel. If the witness says that

16 Mr. Kinder tendered over to her his rights to

17 collect whatever he was supposed to collect. Then

18 that's satisfactory to me. It's subject to

19 connection, obviously. The witness herself can't

20 just say so and so told me I can come here and get

21 money for him. But it is subject to connection.

22 I'm going to allow it.

23 MR. TANNENBAUM: We object, your Honor.

24 THE COURT: Okay, your objection is noted.

25 MR. MONAGHAN: I'll dig that agreement out.

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 I can't find it right now.  
 3 THE COURT: Have you moved 25 and 26?  
 4 THE WITNESS: 25.  
 5 MR. MONAGHAN: I'm moving 25 and 26, your  
 6 Honor.  
 7 THE COURT: Okay, subject to the objections  
 8 that are already on the record. Yes.  
 9 MR. TANNENBAUM: Yes. I don't want to slow  
 10 the including potential jeopardy -- claim of  
 11 jeopardy.  
 12 THE COURT: They were in a partnership or  
 13 some type of corporation. They broke up. As part  
 14 of the deal she got the rights to this. I don't  
 15 think that's against any law. And I don't know  
 16 yet that she is authorized to, because I have not  
 17 seen anything. So, for that limited purpose, it  
 18 is subject to connection, I'm going to allow 25  
 19 and 26 into evidence.  
 20 (Plaintiff's Exhibit Nos. 25 and 26, marked  
 21 and received in evidence)  
 22 MR. MONAGHAN: Your Honor, whenever you take  
 23 the afternoon break I'll dig out the other  
 24 document that we are talking about.  
 25 THE COURT: All right.

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 MR. MONAGHAN: If you would like me to  
 3 continue now, I will, or we can break.  
 4 THE COURT: No, I would like you to continue  
 5 for another ten minutes.  
 6 MR. MONAGHAN: Okay. In the meantime, I'm  
 7 going to ask the reporter to mark another exhibit.  
 8 THE COURT: Tell you what, I'll see you back  
 9 here at half past three, that is ten minutes from  
 10 now.  
 11 MR. MONAGHAN: Thank you, your Honor.  
 12 (Recess: 3:20 p.m.)  
 13 (Reconvened: 3:35 p.m.)  
 14 CAROL ANNE BRYANT,  
 15 the Plaintiff, previously duly sworn  
 16 by the Court, resumed the stand  
 17 and testified further as follows:  
 18 MR. MONAGHAN: I'm going to ask the reporter  
 19 to mark this as exhibit --  
 20 THE COURT: 27.  
 21 MR. MONAGHAN: -- 27.  
 22 For the record, your Honor, this is a  
 23 stipulation of settlement without prejudice in  
 24 this case, Anne Bryant v. Broadcast Music, Inc.  
 25 Index 1592/00. It consists of five or six pages.

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 I believe the Defendant had copies of this  
 3 document.  
 4 Q. I'm showing the witness Exhibit 27 --  
 5 (Plaintiff's Exhibit No. 27, stipulation of  
 6 settlement, marked for identification)  
 7 Q. -- stipulation of settlement.  
 8 And I ask you, Miss Bryant, if your  
 9 signature appears on this document on the signature  
 10 page.  
 11 MR. MONAGHAN: By the way, it also has a FAX  
 12 cover sheet to Miss Valencia, Mr. Bacal's lawyer.  
 13 Q. Is that your signature?  
 14 A. Yes.  
 15 Q. On Page 7?  
 16 A. Yes.  
 17 Q. Do you recognize Mr. Kinder's signature?  
 18 A. Yes.  
 19 Q. Is this the stipulation of settlement with  
 20 Mr. Kinder in this action?  
 21 A. Yes. Yes, it is.  
 22 Q. Is this the document you were referring to  
 23 that conferred rights upon you with respect to  
 24 performance royalties which would otherwise possibly  
 25 have been Mr. Kinder's but because of your settlement

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 you obtained -- withdrawn?  
 3 A. It was two years ago.  
 4 Q. Withdrawn.  
 5 A. There were two. I'm not sure which one did,  
 6 but I -- both of them did, I thought.  
 7 MR. MONAGHAN: I'm going to offer Exhibit 27  
 8 in evidence.  
 9 MR. TANNENBAUM: We object, your Honor.  
 10 First of all, I believe the witness testified that  
 11 these rights that she is claiming she got -- she  
 12 got two months ago. This document was signed in  
 13 July and August of 2001.  
 14 Second of all, they are talking about  
 15 getting performance royalties. As I believe the  
 16 Court knows by now, BMI performance royalties are  
 17 not paid for whatever you got there for GI Joe  
 18 videos and DVDs.  
 19 Third of all, if you read what it says with  
 20 respect to GI Joe it says any representation of  
 21 this theme listed to Anne Bryant prior to 1993  
 22 shall remain so listed. Any representation of  
 23 this theme listed to Ford Kinder prior to 1993  
 24 will remain so listed. In the event that a formal  
 25 right of change or re-registration has been



<p style="text-align: right;">Page 303</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 effected on BMI's records the Kinder Defendants</p> <p>3 will cooperate with the Plaintiff and execute such</p> <p>4 further documents as are necessary to rectify and</p> <p>5 correct the credits and listings with respect to</p> <p>6 GI Joe themes, background cues, as currently</p> <p>7 listed to Anne Bryant will remain so registered.</p> <p>8 Nothing about assigning any rights, whatsoever, to</p> <p>9 sue anybody for certain claims that she believes</p> <p>10 that Mr. Kinder has.</p> <p>11 MR. MONAGHAN: I don't think he's</p> <p>12 understanding what the stipulation does. What</p> <p>13 this stip -- the proffer on this -- by the way, he</p> <p>14 just read from a document a portion -- what it</p> <p>15 does, this is the proffer, your Honor, is the GI</p> <p>16 Joe was in Miss Bryant's BMI catalog. That is a</p> <p>17 matter of record. It was in Exhibit 2. When they</p> <p>18 settled at this point in time the settlement was</p> <p>19 that whatever was in her catalog, even if Kinder</p> <p>20 was entitled to those royalties, would stay in her</p> <p>21 catalog. That's what she testified about this.</p> <p>22 There is another document which is en route to the</p> <p>23 courthouse which relates to the other royalties.</p> <p>24 So she's identified her signature, she's</p> <p>25 identified Kinder's signature.</p>	<p style="text-align: right;">Page 305</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 27 is in subject to further elucidation</p> <p>3 about what it really means or apparently there is</p> <p>4 another document out there somewhere.</p> <p>5 Let's keep going.</p> <p>6 MR. MONAGHAN: Thank you, Judge.</p> <p>7 (Plaintiff's Exhibit No. 27, marked and</p> <p>8 received in evidence)</p> <p>9 DIRECT EXAMINATION</p> <p>10 BY MR. MONAGHAN: (Continued)</p> <p>11 Q. So, just so we are clear, you are not</p> <p>12 claiming that you composed GI Joe?</p> <p>13 A. No --</p> <p>14 Q. Okay.</p> <p>15 A. -- I'm not claiming that.</p> <p>16 Q. What you are claiming is what you testified</p> <p>17 to earlier is that you got certain rights via Exhibit</p> <p>18 27, and the document that is going to be forthcoming;</p> <p>19 is that right?</p> <p>20 A. Yes. And when Ford and I made that</p> <p>21 agreement in 1994 the spirit of the agreement which I</p> <p>22 reminded him of was that GI Joe is yours for Kinder and</p> <p>23 Bryant to settle Kinder and Bryant and that was the</p> <p>24 spirit of it. I think it may be excessive. So Ford</p> <p>25 and I split everything. We always did. So when we</p>
<p style="text-align: right;">Page 304</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 THE COURT: Any other objections?</p> <p>3 MR. TANNENBAUM: Yes, I have one other. It</p> <p>4 is very important too. This settlement happened</p> <p>5 in this case after the complaint was served,</p> <p>6 therefore, it cannot possibly be a claim that is</p> <p>7 in the complaint in this case. It is not a pled</p> <p>8 claim in this case. It can't be. Physically met,</p> <p>9 physically impossible.</p> <p>10 THE COURT: Counsel?</p> <p>11 MS. PHARES: I was only going to emphasize</p> <p>12 Sunbow was not even in the case when this</p> <p>13 settlement was entered. But that, on the face of</p> <p>14 it, this relates solely to public performance</p> <p>15 royalties. There is at least so far no assignment</p> <p>16 by Mr. Kinder of any rights that he may have with</p> <p>17 respect to any other kinds of publishing rights.</p> <p>18 And we are not admitting that publishing rights</p> <p>19 would include any recoveries from DVDs.</p> <p>20 THE COURT: All right, I'm going to admit</p> <p>21 this subject to some further elucidation that I</p> <p>22 find satisfactory. And also the same goes for 25</p> <p>23 and 26. Considering this as some turn over of Mr.</p> <p>24 Kinder's rights to the Plaintiff to GI Joe, I'm</p> <p>25 allowing 25 and 26 in.</p>	<p style="text-align: right;">Page 306</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 figured out, you know, we would share with each other</p> <p>3 whatever is more appropriate.</p> <p>4 Q. Okay, and we're talking about --</p> <p>5 A. I'm talking about the GI Joe song. I wrote</p> <p>6 those arrangements.</p> <p>7 Q. You did the arrangements in the movie?</p> <p>8 A. Yeah. They are not the same. This is an</p> <p>9 old show. This is Kinder and Bryant.</p> <p>10 Q. I have to ask a further question then when</p> <p>11 you say that what you just testified to about having no</p> <p>12 involvement, direct involvement in the composition of</p> <p>13 the music.</p> <p>14 A. I really don't know if I did. GI Joe over</p> <p>15 time -- and I don't know if any of it was -- it was all</p> <p>16 done elsewhere after Ford wrote the song. I don't</p> <p>17 remember that.</p> <p>18 Q. Now does GI Joe have any other names?</p> <p>19 A. The Real American Hero. The commercial name</p> <p>20 for it.</p> <p>21 Q. Okay. Now, you've mentioned something</p> <p>22 different about Exhibit 26.</p> <p>23 GI Joe The Movie, you had some involvement</p> <p>24 with that?</p> <p>25 A. Absolutely. I have the orchestra score</p>

<p style="text-align: right;">Page 307</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 right here. It is a biggie movie theme. It was the</p> <p>3 centerpiece, like the Transformers Movie Theme, was the</p> <p>4 GI Joe -- famous GI Joe song with lead up writing which</p> <p>5 Ford did and I -- some of it was instrumental and I</p> <p>6 did. We did that together. But he wrote that</p> <p>7 wonderful COBRA scream. And Barry Harmon I just</p> <p>8 learned recently he did the additional lyric for that.</p> <p>9 I didn't even see it on there, but it was all leading</p> <p>10 up to the star, which was Ford's original song.</p> <p>11 MR. MONAGHAN: Okay, let's mark that musical</p> <p>12 notation -- we'll give it back to you. It's an</p> <p>13 original, okay. I think we can mark that 28.</p> <p>14 (Plaintiff's Exhibit No. 28, musical</p> <p>15 notation, marked for identification)</p> <p>16 THE COURT: Okay, that has been marked for</p> <p>17 identification.</p> <p>18 Has it been moved into evidence?</p> <p>19 MR. MONAGHAN: Yes, so moved, your Honor.</p> <p>20 THE COURT: All right, any objection to 28?</p> <p>21 MR. TANNENBAUM: No.</p> <p>22 MS. PHARES: No, your Honor.</p> <p>23 THE COURT: All right, 28 is in evidence.</p> <p>24 Hand it back to the court reporter, please.</p> <p>25 (Plaintiff's Exhibit No. 28, marked and</p>	<p style="text-align: right;">Page 309</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 Plaintiff's Exhibit No. 29, can you identify</p> <p>3 this document?</p> <p>4 A. Real American Hero, yes, okay, BMI statement</p> <p>5 that was sent to Bill Dobishinsky for me.</p> <p>6 MR. MONAGHAN: Okay, we offer that Exhibit</p> <p>7 29.</p> <p>8 THE COURT: Objection?</p> <p>9 MS. PHARES: Yes, your Honor. This is a</p> <p>10 sheet relating to commercial jingles for a period</p> <p>11 in 1985 to 1986. It does not refer to</p> <p>12 re-registrations within the scope of the complaint</p> <p>13 or the rulings of this Court.</p> <p>14 THE COURT: All right. Mr. Tannenbaum?</p> <p>15 MR. TANNENBAUM: Same objection.</p> <p>16 THE COURT: What's your answer to that?</p> <p>17 MR. MONAGHAN: Oh, this is GI Joe, the</p> <p>18 registration that we're talking about that was the</p> <p>19 subject of the settlement. It was in Miss</p> <p>20 Bryant's catalog as witnessed by the fact that BMI</p> <p>21 is sending her a statement distribution date</p> <p>22 commercial jingles. We've heard them say they are</p> <p>23 not jingles. And it shows that Real American Hero</p> <p>24 a/k/a GI Joe she is credited with 100 percent of</p> <p>25 the royalties.</p>
<p style="text-align: right;">Page 308</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 received in evidence)</p> <p>3 Q. Now, do we have Exhibit 2, the catalog?</p> <p>4 Does GI Joe or Real American Hero appear in</p> <p>5 the catalog, Exhibit 2?</p> <p>6 A. I think GI Joe does. It does on mine. It</p> <p>7 didn't for a while.</p> <p>8 THE COURT: Try Page 23.</p> <p>9 A. Yeah, GI Joe cues are here, background cues.</p> <p>10 But, you know, The Real American Hero was a jingle name</p> <p>11 and we never could get the BMI database catalog.</p> <p>12 Did I say too much? Here is GI Joe</p> <p>13 background cues.</p> <p>14 MR. MONAGHAN: I'm going to mark one I</p> <p>15 missed earlier which is going to be the next</p> <p>16 exhibit number.</p> <p>17 THE COURT: 29.</p> <p>18 MR. MONAGHAN: 29.</p> <p>19 (Plaintiff's Exhibit No. 29, a BMI</p> <p>20 statement, marked for identification)</p> <p>21 Q. I show you now, if I may, Exhibit 29, which</p> <p>22 I might note was also marked at the McLaughlin</p> <p>23 deposition, BMI employee, number seven at that</p> <p>24 deposition on June 30th '03, attended by all counsel, I</p> <p>25 believe.</p>	<p style="text-align: right;">Page 310</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 MR. TANNENBAUM: Doesn't say a/k/a GI Joe on</p> <p>3 the document.</p> <p>4 MR. MONAGHAN: No, I understand, but the</p> <p>5 witness has testified it is the same song.</p> <p>6 THE COURT: Well, I'll tell you what --</p> <p>7 THE WITNESS: Same song.</p> <p>8 THE COURT: -- she testified to it. I don't</p> <p>9 see the relevance of it. So at this time at least</p> <p>10 I'm going to leave it out.</p> <p>11 MR. MONAGHAN: Your Honor, Exhibit 5 has</p> <p>12 already been in evidence which is a similar</p> <p>13 document. I don't want to beat a dead horse, but</p> <p>14 if I could just pose one more question on this,</p> <p>15 that may answer your Honor's question. Exhibit 5</p> <p>16 is in evidence. It's the same document, same type</p> <p>17 of document. It refers to the same song Real</p> <p>18 American Hero, but here we have a 33 and a third</p> <p>19 interest shown. This is exactly the same document</p> <p>20 for a different period of time, a year later, and</p> <p>21 now it's 100 percent. So we have two -- one in</p> <p>22 evidence already, without a problem --</p> <p>23 THE COURT: Tell me what the point of that</p> <p>24 is, though.</p> <p>25 MR. MONAGHAN: That she's supposed to get at</p>



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 least 100 percent of the GI Joe royalties  
 consistent with her agreement -- the performance  
 royalties with her agreement and settlement  
 with -- it was in her catalog. They had agreed  
 that it would be in her catalog because she was  
 a --

THE COURT: So far I tentatively let you get  
 in the stipulation of settlement and the video and  
 the movie subject to some other connection, which  
 I have not seen yet. And I don't know that -- I  
 mean, there is plenty of testimony in this case  
 that she didn't write GI Joe.

MR. MONAGHAN: Right.

THE COURT: And that this is a right  
 purportedly given to her in a settlement of an  
 action.

MR. MONAGHAN: Yes.

THE COURT: So what does that prove?

MR. MONAGHAN: What did she get in the  
 settlement? What did she get? Did she get a  
 third as indicated in 5? Or did she get 100 as  
 indicated in the proposed exhibit? So somebody is  
 changing percentages with BMI. And that  
 somebody -- and, again, both of these are sent to

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CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 Miss Bryant care of Sunbow's administrator  
 Dobishinsky. So Miss Bryant isn't the person  
 responsible for accomplishing the registrations  
 with BMI. This is done through the publisher, in  
 this case Sunbow or its publishing subsidiaries.  
 So what it shows is that changes are being made by  
 Sunbow.

THE COURT: What's the date of that?

MR. MONAGHAN: This is dated 1986. This is  
 for year '85 to '86. Shows 100 percent to her.  
 '86, '87 it shows 33 percent.

MS. PHARES: Your Honor, both of these  
 documents that he's looking at are in the mid-80s,  
 long before the statute of limitations period for  
 this case. Both of them relate to jingles.

MR. TANNENBAUM: Television commercials.

MS. PHARES: And both of them way precede  
 the settlement agreement that he was referring to  
 earlier.

THE COURT: Well, I mean, the testimony is  
 that Miss Bryant knew that it was in her catalog  
 sort of erroneously and whenever the checks came  
 she testified she used to give them to her  
 partner.

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MR. MONAGHAN: Yes.

THE COURT: I don't know that we need any  
 testimony on that. I mean, later on, you can try  
 it again if you can find somebody that -- who ever  
 this masked marvel is that changed -- that changes  
 these things on us. At least for the present I'm  
 not going to let it in.

MR. MONAGHAN: Okay.

THE WITNESS: Can I speak to Patrick for a  
 minute? I have a question. I'm not allowed to  
 ask a question?

THE COURT: No.

THE WITNESS: No? So --

THE COURT: I don't write music. You don't  
 ask questions. How about that?

THE WITNESS: All right.

THE COURT: You are getting the much better  
 end of that deal.

Let's go ahead.

Q. Okay, Miss Bryant, I'm --

MR. MONAGHAN: I'm going to ask the reporter  
 to mark this as Exhibit 30.

THE COURT: 30, right.

(Plaintiff's Exhibit No. 30, multi-page

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CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 document royalty tally sheet, marked for  
 identification)

Q. I show you now a document, multipage  
 document with the heading Anne Bryant number 784,  
 concise royalty tally sheet, and then featured THBG  
 Foreign 1, multiple pages.

Can you identify this document?

A. Yes. This is Excel chart. E-X-C-E-L chart  
 of royalties. I made from documents that were produced  
 by BMI. Payment documents for myself for Kinder and  
 Joe Bacal and Starwild Music.

Q. Tell the Judge exactly what the process was  
 that you went through to create this document?

A. Took four months. All these documents  
 showed up. A stack that high, everything upside down.

Q. What are these documents?

A. They were payment documents that showed on  
 every given pay out of statement for BMI what Anne got.  
 And then there was one for Joe Bacal. There was one  
 for Ford Kinder. There was one for Starwild Music.  
 But they were in all kinds of order. It took quite a  
 while to put them in year order and sift through them.  
 And then take Anne's statement, Ford's statement, Joe's  
 statement and Starwild's statement, lay them and look



<p style="text-align: right;">Page 315</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 at them for each period and see what happened. And</p> <p>3 very often what we saw --</p> <p>4 Q. Wait, don't characterize them yet.</p> <p>5 A. Okay.</p> <p>6 Q. Now, these documents that you were looking</p> <p>7 at that you used to prepare this document, where are</p> <p>8 those?</p> <p>9 A. They are over there in a little white</p> <p>10 plastic case.</p> <p>11 Q. Okay. So you are saying that the source</p> <p>12 documents that enabled you to put this together are</p> <p>13 over here in this white case; is that right?</p> <p>14 A. Yes. It says Excel on it.</p> <p>15 Q. And I'm showing you now the case that you've</p> <p>16 talked about, am I not?</p> <p>17 A. Yes, yes. Year by year.</p> <p>18 Q. And how did you get the documents that you</p> <p>19 used to prepare this concise tally sheet?</p> <p>20 MS. SAFFER: Your Honor, I am going to</p> <p>21 object to this. There were allegations made that</p> <p>22 BMI did not produce every statement for the past</p> <p>23 20 years, which in fact is probably true because</p> <p>24 there were certain documents very old that were</p> <p>25 missing. We are in a position from our computer</p>	<p style="text-align: right;">Page 317</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 Okay, so this information relates to which</p> <p>3 parties and individuals?</p> <p>4 A. Anne Bryant, Joe Bacal and Ford Kinder and</p> <p>5 Starwild Music.</p> <p>6 Q. Okay, Starwild Music being the publisher?</p> <p>7 A. Yes. They are missing 15 statements you</p> <p>8 were asking about.</p> <p>9 Q. Okay. And what compositions are at issue or</p> <p>10 are discussed in these documents?</p> <p>11 A. Well, I broke it down further to GI Joe,</p> <p>12 Transformers, My Little Pony, JEM and Visionaries.</p> <p>13 Those are the ones I saw in there.</p> <p>14 Q. And this was attached to your motion papers</p> <p>15 back when the summary judgment motion was made at the</p> <p>16 end of '03, was it not?</p> <p>17 A. I believe so. I don't really remember when</p> <p>18 I did this.</p> <p>19 Q. Okay.</p> <p>20 MR. MONAGHAN: And I'll represent to the</p> <p>21 Court that it was and it was furnished to the</p> <p>22 Defendants at that time. And I believe I even</p> <p>23 furnished them with a disc, at least one of them.</p> <p>24 MR. TANNENBAUM: No, we never got any</p> <p>25 underlying data for this.</p>
<p style="text-align: right;">Page 316</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 records to give an exact accounting of the amounts</p> <p>3 that were paid to each one of these individuals,</p> <p>4 which I'm sure would be more accurate if the Court</p> <p>5 needs it, requires it, for whatever reason. I</p> <p>6 would be happy to do that.</p> <p>7 THE COURT: Well, I don't see that's an</p> <p>8 objection. This document has not even gone</p> <p>9 anywhere yet except it's being explained how it is</p> <p>10 being put together, so just hold on that.</p> <p>11 MS. SAFFER: Okay.</p> <p>12 THE COURT: Go ahead. So where did all</p> <p>13 these documents come from in the white case?</p> <p>14 THE WITNESS: They were produced by BMI for</p> <p>15 each one of us. About two years ago, I think it</p> <p>16 was. We asked for, you know, printouts from</p> <p>17 Ford's and mine and Joe's so we could figure out</p> <p>18 what is going on with Sunbow, what was happening</p> <p>19 with Sunbow -- I mean Starwild, and why things</p> <p>20 didn't seem to match up. So we got these payment</p> <p>21 documents.</p> <p>22 Q. Now, let me see if I can -- keeping in mind</p> <p>23 that 100 percent publisher, 100 percent writer, so it</p> <p>24 should somehow equate when you've got the writers and</p> <p>25 the publisher.</p>	<p style="text-align: right;">Page 318</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 MS. PHARES: Any underlying data.</p> <p>3 MS. SAFFER: Also, to the extent that it is</p> <p>4 relevant, it may not be. BMI at that point was</p> <p>5 not part of this action. And you remember you had</p> <p>6 stayed us and we didn't get all of the documents.</p> <p>7 We got some things.</p> <p>8 THE COURT: All right.</p> <p>9 Q. Okay. Now, what were the types -- can you</p> <p>10 show the Judge -- there's too much here to go through</p> <p>11 one by one unless the Defendants want us to do that or</p> <p>12 the Court wishes. But can you illustrate the</p> <p>13 methodology you referred to by referring to some of the</p> <p>14 original source documents?</p> <p>15 A. Yes, I would take -- you want me to take one</p> <p>16 of these out?</p> <p>17 Q. Yes, that's exactly what I would like you to</p> <p>18 do.</p> <p>19 A. 1988. That looks skinny.</p> <p>20 Q. Before you even do that yet, Anne, what was</p> <p>21 the ultimate goal?</p> <p>22 A. The ultimate goal was trying to reconcile</p> <p>23 the payments, you know, to -- if the publisher had \$100</p> <p>24 dollars in this instance, do the three of us writers</p> <p>25 get \$100 somehow even between us or not? Just</p>

<p style="text-align: right;">Page 319</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 determine who was getting what and how much and if we</p> <p>3 were all being paid fairly. You know, I was doing</p> <p>4 everything I could to go -- to be very careful about</p> <p>5 what I was saying here.</p> <p>6 Q. Okay.</p> <p>7 A. So it gave me a window into where the money</p> <p>8 was going and where it wasn't going.</p> <p>9 Q. Okay.</p> <p>10 A. Oh, you want me to do this? Yeah. Okay.</p> <p>11 So what I would do -- here is --</p> <p>12 Q. Wait, let me interrupt you. I'm sorry for</p> <p>13 interrupting, the questions are coming on the fly.</p> <p>14 What period of time is encompassed in this</p> <p>15 exercise?</p> <p>16 MS. PHARES: Your Honor, could Mr. Monaghan</p> <p>17 step back so he can speak loudly enough for all of</p> <p>18 us to hear?</p> <p>19 MR. MONAGHAN: Okay, I apologize.</p> <p>20 Q. What period of time is encompassed in this</p> <p>21 exercise?</p> <p>22 A. I started in 1988 and I finished in 2000.</p> <p>23 That's as many documents as I had produced.</p> <p>24 Q. And what -- how would you describe what</p> <p>25 these documents were? Are they BMI documents?</p>	<p style="text-align: right;">Page 321</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 added together may equal what was paid to the</p> <p>3 writers.</p> <p>4 Also, there was a period of time that Mr.</p> <p>5 Kinder, one of the writers, didn't belong to BMI.</p> <p>6 He belonged to ASCAP. So he wasn't getting any</p> <p>7 money from ASCAP. Making this document --</p> <p>8 THE COURT: In one of the decisions here</p> <p>9 didn't I cut this off at some time or another?</p> <p>10 MR. TANNENBAUM: That's the other thing, we</p> <p>11 are going back to 19 --</p> <p>12 THE COURT: What was the date?</p> <p>13 MS. PHARES: 1994.</p> <p>14 MR. TANNENBAUM: 1994. Six years.</p> <p>15 THE COURT: 1994, okay. So why doesn't BMI</p> <p>16 give us -- hold on.</p> <p>17 MS. SAFFER: Yes. Just responding.</p> <p>18 THE COURT: -- your own work sheet for what</p> <p>19 each of these parties got including the publisher?</p> <p>20 MS. SAFFER: From 1994 --</p> <p>21 THE COURT: To date.</p> <p>22 MS. SAFFER: -- to date.</p> <p>23 I would be happy to do that. I will have</p> <p>24 that in court tomorrow morning.</p> <p>25 THE WITNESS: That's wonderful. Then I have</p>
<p style="text-align: right;">Page 320</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 A. They are BMI printouts. BMI on-line royalty</p> <p>3 statements, T.V. BG royalty details. And they gave me</p> <p>4 these summaries for each one of us.</p> <p>5 Q. And what would it show, for example, with</p> <p>6 respect to Starwild over that period of time as the</p> <p>7 publisher?</p> <p>8 A. Well, it would show what Starwild got for</p> <p>9 the same titles.</p> <p>10 Q. And why would that be relevant to what you</p> <p>11 think you should have gotten?</p> <p>12 A. Well, for example, if Starwild got \$100 and</p> <p>13 Joe got \$10 and Anne got \$10 and Ford got \$10, then who</p> <p>14 got \$70? What I was sometimes able to see there was</p> <p>15 something that wasn't there. I could always see what</p> <p>16 was there and who got what, but then sometimes when</p> <p>17 there was a gaping hole like the difference between</p> <p>18 \$30,000 and \$1,000 I wondered who got the other 29. I</p> <p>19 mean, I wondered that a lot.</p> <p>20 MS. SAFFER: Your Honor, to the extent that</p> <p>21 Miss Bryant has not included all of the relevant</p> <p>22 parties, I object to the production of the</p> <p>23 document. In other words, there was more than one</p> <p>24 publisher. And that might, you know, one</p> <p>25 publisher's share and another publisher's share</p>	<p style="text-align: right;">Page 322</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 it that way too.</p> <p>3 THE COURT: So we can compare the two.</p> <p>4 MR. MONAGHAN: That's fine.</p> <p>5 MS. SAFFER: Excuse me, I may have spoken</p> <p>6 too quickly. I have to speak to the business</p> <p>7 people. It may take some time to separate out the</p> <p>8 compositions that are in this lawsuit from</p> <p>9 payments made for other things. In other words,</p> <p>10 if I was just giving a total amount paid to each</p> <p>11 party, I can do that instantaneously.</p> <p>12 THE COURT: Tomorrow afternoon will do.</p> <p>13 MS. SAFFER: I will do my best. I will</p> <p>14 confer with the business people.</p> <p>15 THE COURT: Next day I'm sure you can do</p> <p>16 that.</p> <p>17 THE WITNESS: Are you going to mix in the</p> <p>18 jingles?</p> <p>19 MR. MONAGHAN: We may be talking apples and</p> <p>20 another kind of apples.</p> <p>21 THE WITNESS: That's what I'm worried about.</p> <p>22 MR. MONAGHAN: We're a little worried about</p> <p>23 that.</p> <p>24 THE COURT: All right.</p> <p>25 MR. MONAGHAN: If I may address Miss Saffer</p>



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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 about what it is she's going to get us.  
 3 THE COURT: Yes.  
 4 MR. MONAGHAN: Would this address commercial  
 5 jingles?  
 6 MS. SAFFER: Again, depending upon what it  
 7 is I'm asked to get it may require, frankly, the  
 8 writing of a new program. It may take a couple of  
 9 days because, in other words, when we now send out  
 10 statements things are combined. So we have to sit  
 11 down and isolate the songs that are at issue here  
 12 as well as the relevant time period, and also  
 13 separate out payments that may relate to jingles,  
 14 because they are not part of this lawsuit per your  
 15 Honor's ruling. So just -- I'm not saying that it  
 16 cannot be done, I'm just saying it may be a little  
 17 bit of a project, therefore, I ask some indulgence  
 18 in order to create it.  
 19 THE COURT: Don't worry. But you understand  
 20 now that -- Miss Bryant, explain once more this  
 21 tally that you've made; what is included in that?  
 22 THE WITNESS: It says right in the  
 23 right-hand corner feature theme and background and  
 24 foreign. Those are the statements you furnished  
 25 to me. I was begging for the jingle statements

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 but no one had the database anymore, so --  
 3 MS. SAFFER: Correct.  
 4 THE WITNESS: If you don't have the database  
 5 then you still don't have it.  
 6 MS. SAFFER: Again, in more recent years,  
 7 your Honor, the jingle database has been combined.  
 8 It wasn't early on, so --  
 9 THE COURT: Hold on. So what I'm going to  
 10 ask you to do is come up with an equivalent of  
 11 what Miss Bryant has brought to court today.  
 12 MS. SAFFER: I will. I just want to make  
 13 sure -- I'm going to write it down that everybody  
 14 is in agreement that this is what I'm doing so it  
 15 won't be a problem later on.  
 16 I will get the earnings for each one of the  
 17 parties who are involved in this lawsuit, right?  
 18 THE COURT: Yes.  
 19 MS. SAFFER: For the songs that are involved  
 20 in this lawsuit from 1994 through whenever you  
 21 would like.  
 22 THE WITNESS: Give her one of these.  
 23 MR. MONAGHAN: We can give that too, yes.  
 24 THE COURT: She has one of these.  
 25 MS. SAFFER: No, I never got it.

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 MR. MONAGHAN: Jeff, give her one.  
 3 THE COURT: Well, actually that will be more  
 4 complete than this because this only went up to  
 5 2000.  
 6 MR. TANNENBAUM: Also save a lot of time  
 7 because we won't have to go through the underlying  
 8 data.  
 9 THE WITNESS: This is '98 to 2000. This is  
 10 without jingles. You can do it that way. After  
 11 2000 is when you combined it.  
 12 MR. TANNENBAUM: I don't --  
 13 THE WITNESS: It is like the British Empire,  
 14 it is playing somewhere, something is always  
 15 playing somewhere, it is amazing.  
 16 MS. PHARES: Your Honor, not only are the  
 17 jingles not being played after 1994, because Miss  
 18 Bryant already explained to us they only exist for  
 19 a quarter and they were created in the 80s, but  
 20 jingles are also not part of either the complaint  
 21 or your Honor's rulings. So I really think it  
 22 will just contaminate this data --  
 23 THE COURT: I don't think we've asked --  
 24 THE WITNESS: It goes back one year.  
 25 THE COURT: We didn't ask for the jingles.

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 MR. MONAGHAN: We are asking for the  
 3 jingles. But what Miss Saffer said is they didn't  
 4 keep that information separately.  
 5 THE COURT: She can't provide that.  
 6 MR. MONAGHAN: It is going to be included.  
 7 MS. SAFFER: I can provide it for recent  
 8 years. I can't provide it for earlier years. Off  
 9 the top of my head, I can consult with my client,  
 10 I do not know when the two databases were  
 11 combined.  
 12 MR. MONAGHAN: Now, your Honor, you heard a  
 13 suggestion that differences may be explained by  
 14 another publisher. I would like to stipulate -- I  
 15 would like them to stipulate that for every dollar  
 16 the publisher gets, whether they are multiple  
 17 publishers adding up to a dollar, there should be  
 18 a similar dollar paid to the writers.  
 19 MS. SAFFER: No, your Honor, I can't  
 20 stipulate to that, and I don't think the other  
 21 parties, the relevant parties -- because it may be  
 22 that a share of a particular song is licensed by  
 23 another society.  
 24 What I am prepared to do is give you -- and  
 25 I will have a witness that attests to the fact --



<p style="text-align: right;">Page 327</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 an accurate reflection of the amounts earned and</p> <p>3 paid to all the parties who are involved in the</p> <p>4 songs that are at issue in this litigation from</p> <p>5 1994 to date. And I will not agree in the</p> <p>6 abstract that the publisher share and the writer's</p> <p>7 share automatically is the same, because on some</p> <p>8 of these works there may be a portion that was</p> <p>9 licensed by somebody else.</p> <p>10 THE COURT: Okay, even if there is</p> <p>11 disagreement about it, it would be helpful to the</p> <p>12 Court if nobody else. All right.</p> <p>13 MR. MONAGHAN: Okay.</p> <p>14 THE COURT: Go ahead.</p> <p>15 MR. MONAGHAN: Thank you, sir. Am I allowed</p> <p>16 to pursue this further?</p> <p>17 THE COURT: Sure.</p> <p>18 THE WITNESS: This was some job.</p> <p>19 DIRECT EXAMINATION</p> <p>20 BY MR. MONAGHAN: (Continued)</p> <p>21 Q. Okay. Now, what did you say it took you?</p> <p>22 Four months?</p> <p>23 A. It took me four months. I'm running a</p> <p>24 business too.</p> <p>25 Q. Now, ultimately --</p>	<p style="text-align: right;">Page 329</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 case.</p> <p>3 THE COURT: Well, that part of it from 1994</p> <p>4 to 2000 is relevant.</p> <p>5 MS. PHARES: Well --</p> <p>6 THE COURT: That's what she says.</p> <p>7 MS. PHARES: I understand, your Honor. I</p> <p>8 have no problem with the admission of a</p> <p>9 compilation exhibit but, you know, we don't really</p> <p>10 know what is in this box, and it has not even been</p> <p>11 identified so that we have it, you know, sort of</p> <p>12 bound together and so forth.</p> <p>13 MR. MONAGHAN: Happy to do that.</p> <p>14 MS. PHARES: If Mr. -- we don't have to do</p> <p>15 this this evening, Mr. Monaghan.</p> <p>16 THE COURT: Folks, I'm going to allow this</p> <p>17 in because it is some proof going to the</p> <p>18 Plaintiff's question of whether or not she</p> <p>19 sustained any damages. She claimed, I'm not</p> <p>20 saying that it is true, that the publisher was</p> <p>21 supposed to get as much as the writers or writer</p> <p>22 no matter what. Now, I'm not saying you have to</p> <p>23 agree to that. So for that limited purpose I'm</p> <p>24 going to allow this in. If you want to produce</p> <p>25 other evidence, please feel free to do so.</p>
<p style="text-align: right;">Page 328</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 THE COURT: Is there another --</p> <p>3 MS. PHARES: Your Honor, this isn't being</p> <p>4 admitted then; is that correct?</p> <p>5 THE COURT: It's never been offered.</p> <p>6 MS. PHARES: Oh, I see.</p> <p>7 MR. MONAGHAN: Not yet.</p> <p>8 THE COURT: Not yet.</p> <p>9 MS. PHARES: Not clear to me what was going</p> <p>10 on.</p> <p>11 MR. MONAGHAN: And we are offering it</p> <p>12 essentially as a compilation of a chart. We are</p> <p>13 offering it as a chart of information put together</p> <p>14 by the witness based on the original source</p> <p>15 documentation.</p> <p>16 THE WITNESS: It's very accurate.</p> <p>17 THE COURT: But it is only good for two</p> <p>18 years, right?</p> <p>19 MR. MONAGHAN: No. The witness did, if I'm</p> <p>20 not mistaken --</p> <p>21 THE WITNESS: 2000 was the end of the</p> <p>22 statements I got.</p> <p>23 MS. PHARES: From 1988 until 2000.</p> <p>24 THE WITNESS: Still a history.</p> <p>25 MS. PHARES: It's also not relevant to this</p>	<p style="text-align: right;">Page 330</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 MR. TANNENBAUM: I just want to state my</p> <p>3 objection, your Honor, please.</p> <p>4 THE COURT: Okay.</p> <p>5 MR. TANNENBAUM: Again, it is an unjust</p> <p>6 enrichment claim against Joe Bacal. For some</p> <p>7 reason she didn't get paid certain monies that</p> <p>8 she's entitled to from some other entity for some</p> <p>9 other reason. That is not this case. Also, to</p> <p>10 the extent this document reflects any payments</p> <p>11 from 1988 to August of 1994, it is irrelevant.</p> <p>12 THE COURT: I think I told you that I would</p> <p>13 only take information abstracted from this dealing</p> <p>14 with 1994 to date. Although this one runs out in</p> <p>15 the year 2000, so this is six years.</p> <p>16 MS. PHARES: And, your Honor, similarly, I</p> <p>17 object to the extent that this is relating to an</p> <p>18 unjust enrichment claim in which I think it is</p> <p>19 conceded Sunbow received no part of the writer's</p> <p>20 share.</p> <p>21 And, furthermore, I want to make clear</p> <p>22 that -- hang on, I just lost my train here.</p> <p>23 THE COURT: Join the club.</p> <p>24 MR. MONAGHAN: My train doesn't leave the</p> <p>25 station sometimes.</p>

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CAROL ANNE BRYANT - DIRECT/MONAGHAN  
THE COURT: All right.

MS. PHARES: All right, I will leave it at that. It relates only to the performance royalties -- oh, I know what my point was. And I was going to say and to the extent also that Miss Bryant is putting all this evidence in to support her claim of damages, I would like to still point out that so far as I can tell, Miss Bryant has not yet put in any evidence with respect to her theory of recovery of her entitlement of her liability.

THE COURT: What I was going to say before is Miss Bryant said that she attempted to juxtapose these various payments. And she said, well, what do you do if somebody -- if the publisher got 30,000 and the writer got one, somebody has to explain that.

So I'm going to let it in for whatever it is worth. So it's -- whatever this number is. It's 30, it is now in evidence.

MR. TANNENBAUM: Just one last question about the chart, your Honor. Does the chart have anywhere on here the administrative fee that Mr. Dobishinsky was getting?

THE COURT: Again --

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MR. TANNENBAUM: Just so we know what it is.

THE COURT: Again, can you tell me what the difference is between that -- hold on -- and cross-examination?

MR. TANNENBAUM: I want to understand the document so I can make a basis for the objection.

THE COURT: That's why you cross-examine. It doesn't go to voir dire, I assume.

Let's go.

MR. MONAGHAN: Can I ask the reporter -- I know you were good enough to mark the back. I think it will get lost.

(Plaintiff's Exhibit No. 30, marked and received in evidence)

(Plaintiff's Exhibit No. 31, marked for identification)

MR. MONAGHAN: Just for the record it is my belief that we did produce copies of --

THE WITNESS: I remember we gave it to Roseann Kitson --

MR. MONAGHAN: -- of each of these documents.

THE WITNESS: -- at my deposition.

THE COURT: All right, this is only for

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CAROL ANNE BRYANT - DIRECT/MONAGHAN  
identification.

MR. MONAGHAN: Okay.

MS. PHARES: Just one final question. Can you tell us when this was created?

THE WITNESS: I could if I looked at my computer, I bet. You know how you go in it says original date created?

MR. MONAGHAN: What is your best recollection sitting here today when you did this?

MS. PHARES: It was produced to us when we were here to meet with your Honor on March 2nd.

MR. MONAGHAN: Right.

MS. PHARES: If you can tell me if it was on or about that time.

THE WITNESS: If somebody can tell me when my deposition was at your office, it was March --

THE COURT: I'll tell you what, I think everybody is worn out and I think I'm going to bring this session today to a close. We'll start again at 10:30 tomorrow morning.

How much longer do you have, counsel?

MR. MONAGHAN: I wouldn't guess that I have more than maybe an hour, at the most.

THE COURT: All right, so be prepared for

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some snappy cross-examinations, because many of the cross-examinations have been -- questions have been raised as objections. So I would tend to think that the cross-examination should be a little shorter. All right.

MR. MONAGHAN: Thanks, Judge.

THE COURT: I'll see you tomorrow morning at 10:30 unless there is something you must put on the record.

MR. TANNENBAUM: Just quickly for scheduling purposes if we get to another witness tomorrow can we know who it is?

MR. MONAGHAN: Mr. Bacal.

MR. TANNENBAUM: Thank you.

THE COURT: You'll have certainly time to cross-examine. Thank you all for helping out in this thing, you know, it's -- it has to be done. We're here to do it and I appreciate it.

MR. MONAGHAN: Thank you for your patience.

THE WITNESS: Thank you.

(Court Adjourned: 4:15 p.m.)

oOo

CERTIFICATION

I, Elizabeth A. Kent, Senior Court Reporter for  
the State of New York, do hereby certify the foregoing  
to be true and accurate as taken by me on 7th Day of  
July, 2007, before the Hon. Andrew P. O'Rourke, J.S.C.

\_\_\_\_\_  
Elizabeth A. Kent

- CERTIFIED TRANSCRIPT -